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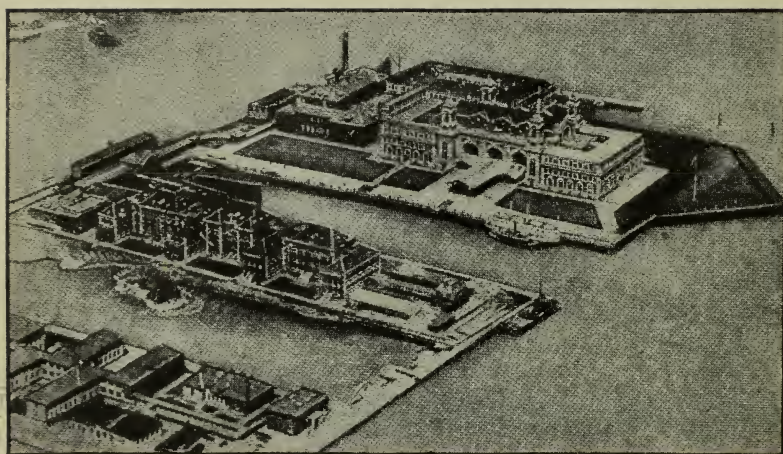
IMMIGRATION RESTRICTION



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IMMIGRATION RESTRICTION

A
STUDY OF THE
OPPOSITION TO AND REGULATION OF
IMMIGRATION INTO THE
UNITED STATES

BY
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Dec 1911

TO
MY MOTHER AND FATHER

FOREWORD

The United States of America, a nation great in all things, is ours today. To whom will it belong tomorrow?

Many years ago our people, proud of their institutions, ambitious, hopeful, altruistic and sympathetic, entertained the thought that their country was destined by an all-wise Providence to serve as the world's great harbor of refuge to which the ill-circumstanced of all nations might repair. The myth of the melting pot grew and flourished. With little or no discrimination we took unto ourselves the blood of all classes and all climes, all races and all religions. Our land was new. It needed development. We yearned for growth in things material. Counting not the ultimate cost, we invited all to come to help us build our houses and our highways, to help us dig our coal and iron and gold, to help us hew and plant and fabricate.

The result is too well known to require extensive comment. Millions came. Today, instead of a well-knit homogenous citizenry, we have a body politic made up of all and every diverse element. Today, instead of a nation descended from generations of freemen bred to a knowledge of the principles and practices of self-government, of liberty under law, we have a heterogeneous population no small proportion of which is sprung from races that, throughout the centuries, have known no liberty at all, and no law save the decrees of overlords and princes. In other words, our capacity to maintain our cherished institutions stands diluted by a stream of alien blood, with all its inherited misconceptions respecting the relationships of the governing power to the governed.

It is out of an appreciation of this fundamental fact, vague at first, but later grown firm and substantial, that the

American people have come to sanction—indeed to demand—reform of our immigration laws. They have seen, patent and plain, the encroachments of the foreign-born flood upon their own lives. They have come to realize that such a flood, affecting as it does every individual of whatever race or origin, can not fail likewise to affect the institutions which have made and preserved American liberties. It is no wonder, therefore, that the myth of the melting pot has been discredited. It is no wonder that Americans everywhere are insisting that their land no longer shall offer free and unrestricted asylum to the rest of the world.

The United States is our land. If it was not the land of our fathers, at least it may be, and it should be, the land of our children. We intend to maintain it so. The day of unalloyed welcome to all peoples, the day of indiscriminate acceptance of all races, has definitely ended.

ALBERT JOHNSON,

Chairman, Committee on Immigration and Naturalization, House of Representatives, Washington, D. C.

PREFACE

No field of modern discussion has been so marred by prejudice as the immigration problem. Blood has been not only thicker than water but more compelling than the cooler processes of thought. The average man has thought of the immigration problem in terms of himself or of his immediate ancestry. Although all Americans, except the Indians, are in a sense immigrants, yet from the first years of our government to the present hour, those who have been prior in point of time have looked with no little misgivings on the stream of immigrants that have followed them. Race prejudice has too often controlled legislation towards the new comers. But, on the other hand, the policy of the wide open door has sometimes been carried to the point where it seemed to careful observers that the distinctively American spirit in community life, in government, in industry, might be jeopardized.

The most amazing thing about the immigration problem is the likeness of the arguments of one generation to the contentions of another. The points of view and prejudices of many sons are like unto their fathers'. Here, as in other enduring issues, there seems to be no new thing under the sun. How important, then, is the task of every citizen to think through the immigration question for himself, to free himself from bias, to seek only the truth! The great debates and changes in the immigration policy in the past illuminate the future; it is rank folly to attempt the solution of the problem in 1927 by century-old prejudices and to ignore the history of the attempts that have been made to deal fairly with ourselves and with the strangers knocking at our gates.

A study of the development of the opposition to immigration into this country is a continuous illustration of the

principle set forth by Dicey that in even the most democratic countries "the opinion which changes the law is in one sense the opinion of the time when the law is actually altered; in another sense it has often been—the opinion prevalent some twenty or thirty years before that time; it has been as often as not in reality the opinion not of to-day, but of yesterday." ¹

Many persons believe that the opposition to immigration is a thing of recent years. Yet as one seeks for the origin of the opposition to immigration, it is necessary to go further and further back into our history, even to early colonial days. There we find the colonists with hostile feelings toward the immigrants who were entering, while a bitter opposition found expression in colonial laws against certain undesirable classes, especially against paupers, criminals, the indentured classes and against certain religious sects, especially the Catholics. From those earliest days to the present time there has been a developing opposition to immigration, greater at some periods in our history than at other periods, yet always in evidence. Frequently it failed to result in legislation. Yet the arguments grew stronger and the demand for restriction and selection grew greater, until first the states under their police powers and then the Federal Government under its commercial powers passed legislation designed to solve the problems resulting from immigration.

To understand present day legislation one should study the development of this opposition to really appreciate the fact that the legislation of to-day is not a thing of the moment but the product of almost two hundred years of study and thought by the American people. Virtually every argument, every means of restriction, and every method of investigation used in recent years has been used or recommended at various times in our history for over a hundred years.

No book to-day presents this side of the picture in any

¹ Dicey, "Law and Public Opinion in England," pp. 7, 32.

adequate manner. It has been my purpose to trace the development of the opposition to immigration from the earliest colonial days to the present time. At the same time I have tried to keep the other side of the problem ever before the reader. References to any standard text on the subject will enlarge such points noted throughout the study.

The accumulation of evidence has led me to believe in the necessity of immigration restriction. However, in tracing the development of the opposition to immigration and the legislation that has resulted therefrom, it has *not* been my purpose in this study *to judge the merit and truthfulness* of the causes of the opposition and legislation. Hence, I have sought to point out only the particular grounds on which these rest. For, it has been impossible in one volume to present the picture of developing opposition and at the same time to pass judgment thereon in any detailed manner. However, the author will have accomplished his purpose if he causes a stimulation of interest in the problem by presenting this neglected side of the subject.

ROY L. GARIS.

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IMMIGRATION RESTRICTION

IMMIGRATION RESTRICTION

CHAPTER I

COLONIAL REGULATION OF IMMIGRATION

IMMIGRATION into United States: Its Growth—Periods—The colonies English in structure—Colonial ideals—The southern colonists—The northern colonists—The Dutch—The Scotch-Irish—The Germans—The French Huguenots—The Indentured classes—Pauper and criminal classes—Colonial legislation and opposition—Results—Conclusions.

The immigration problem is almost as old as immigration itself; and that means, in American history, almost coterminous with the settlement of the country. For, the peopling of the continent has been well-nigh from the beginning due to immigration, rather than to the natural increase of those already within the country.

In 1640 the population of the colonies was 25,000. In 1660 the population had increased to 80,000; and in 1689 to about 200,000. The half-million mark was passed in 1721; the million mark in 1743; and the two million mark in 1767. At the outbreak of the Revolution the population numbered about two and one-half million. When the first census was taken in 1790, the population, exclusive of Vermont and the territory northwest of the Ohio, was a little short of four million, viz., 3,929,000. From 1790 to 1820 the immigrants numbered about a quarter of a million; in the early twenties the annual influx of immigrants was about ten or twelve thousand; in the late twenties about twenty thousand. In 1837, just before the panic, the annual immigration was 79,000. By 1842 the figures of annual immigration had reached 100,000; by 1854, 428,000. Then, owing first to the bad times and later to the war, the figures fell

off, increasing again subsequently until in 1873, just before the panic, when immigration equaled 459,000. Thereafter the high- and low-water marks of annual immigration varied with good and bad times. By 1882 the high-water mark was 789,000. It was not until the present century that the annual immigration exceeded a million, the net increase in 1907 being 1,050,000. The gross immigration in that year was 1,285,000, a figure almost reached again in 1914 when the gross immigration was 1,218,000; although in that year the net increase was only 769,000. Every year from 1900 to 1914 saw virtually a million or more immigrants enter our gates.

"The history of immigration into the United States may for convenience be divided into five periods. The first of these includes the time between the first settlement of the North American colonies and the year 1783. This date is chosen for the end of this first period because, as Professor Mayo-Smith has expressed it, 'At that time the state was established and any further additions to the population had little influence in changing its form or the language and customs of the people.'¹ The second period, from 1783 to 1830, may be called the period of 'free immigration'. It coincides with the beginning of our independent life, and the beginning of immigration as a distinctly American national problem. It was a period of small immigration, and may be designated as the period of free immigration because no attempt was made by any governmental agency to control the movement. The action of the Federal Government in beginning to count the immigrants in 1820 is of great importance as marking the beginning of our immigration statistics. The third period begins with 1830 and ends in 1882. It may be called the period of 'agitation and state regulation'. The year 1830 is chosen rather arbitrarily as representing better than any other assignable date the appearance of a new sentiment toward immigration on the part of the American people. The fourth period, from 1882 to 1917, is marked by the passage of two important pieces

¹ Mayo-Smith, R., *Emigration and Immigration*, p. 36.

of legislation, and may be called the period of 'federal control: individual selection'. The final period, from 1917 to the present, may be designated the period of 'federal control: group selection and restriction.' " 2

The first attempts to found colonies in this country by Sir Humphrey Gilbert and Sir Walter Raleigh were pitiable failures. But the settlement on the James River in 1607 marked the beginning of a nation—a nation that was certainly English in its foundation, whatever may be said of the superstructure. Virginia, New England, Maryland, the Carolinas, New Jersey, Pennsylvania, and Georgia were begun by Englishmen; and New England, Virginia, and Maryland remained almost entirely English throughout the seventeenth century and well into the eighteenth. "Foreigners" began early to straggle into the colonies. But not until the eighteenth century was well under way did they come in appreciable numbers, and even then the great bulk of these non-English newcomers were from the British Isles, of Welsh, Scotch, Irish, and Scotch-Irish extraction.

"These colonies reproduced, in so far as their strange and wild surroundings permitted, the towns, the estates, and the homes of Englishmen of that day. They were organized and governed by Englishmen under English customs and laws; and the Englishman's constitutional liberties were their boast until the colonies wrote these rights and privileges into a constitution of their own." 3

These colonies took root at a time when profound social and religious changes were occurring in England. Churchmen and dissenters were at war with each other; autocracy was struggling to survive the representative system; and agrarianism was contending with a newly created capitalism for economic supremacy. The old order was changing. Vain attempts were made to stay the progress of the time by labor, poor, and corn laws. However, these laws only served to fill the highways with vagrants, vagabonds, men-

² Fairchild, *Immigration* (rev. ed.), pp. 31-2.

³ Orth, S. P., *Our Foreigners*, p. 6.

dicants, beggars and worse. Under conditions then existing it was felt that the country was overpopulated. It was for these—for the restive, the discontented, the ambitious, as well as for the undesirable surplus, that the American colonies provided a welcome outlet.

To the southern plantations were lured those to whom land owning offered not only a means of livelihood but social distinction. These settlers were, in part, adventurers; younger sons of noble families who disdained trade but were too poor to keep up family pretensions; professional men, lawyers, doctors and even clergymen who were ambitious to become landed gentlemen; and other members of the aristocracy who found it advisable to leave England, and, in part, rather unworthy representatives of the lower classes. A combination of political, social, and economic causes was responsible for their coming.

The northern colonies were settled by a different class of the population. They were settled by the Separatists and Puritans whose motive for coming was primarily of a religious character, and by the town-folk, by that sturdy middle class which had wedged its way socially between the aristocracy and the peasantry, which asserted itself politically in the Cromwellian Commonwealth and later became the industrial master of trade and manufacture.

The Dutch came to Manhattan in 1623, taking possession of this unassigned central region. Although they held sway over the region in which they settled for only fifty years, yet it was long enough to stamp upon New Amsterdam the cosmopolitan character it has ever since maintained. For, "the same spirit that made Holland the lenient host to political and religious refugees from every land in that restive age characterized her colony and laid the foundations of the great city of to-day."⁴ With the growth of the English colonies in the North and South, this central territory in the hands of a foreign power came to be recognized as a source of annoyance and danger, for, due to its geographical location, it threatened to split the English colo-

⁴ Orth, S. P., *op. cit.*, p. 14.

nies. Faced with such a possibility, on the occasion of a war with Holland, England took possession of this region without serious opposition; and from it formed the colonies of New York and New Jersey.

When the territory of Pennsylvania was granted for settlement to William Penn in 1681, the whole Atlantic coast from Canada to Florida became a field of colonization, subject only to English authority. The foundation of the United States thus consisted of colonists from England. However, in addition to the colonists, people from practically every country on the continent came to these English colonies. These were the *true immigrants* and for the most part they came to the central colonies, especially to New York and Pennsylvania. These were, in particular, the Scotch-Irish, the Germans or Palatines, and the French Huguenots.

✓ The most important and influential influx of non-English stock into the colonies was the copious stream of Scotch-Irish, who were called Scots because they lived originally in Scotia and Irish because they moved to Ireland, although they were "very little Scotch and much less Irish."⁵ Frontier life was not a new experience to these hardy and remarkable people, for when they migrated to Ulster it was a wild moorland and the Irish were more than unfriendly neighbors. Yet, within three generations they had changed the fens and mires into fields and gardens and had built flourishing towns and were doing a thriving manufacture in linens and woollens. Early in the eighteenth century in her mercantilist blindness, England began to pass legislation that discriminated against and cut off these articles from English competition. Nor was the British Parliament content with this, for it also discriminated against Presbyterianism. Since these Scotch-Irish were Presbyterians, their religion was thus subject to attack. Furthermore, their hundred year leases were running out and the low-living Irish began to outbid them by offering to pay higher rents. These civil, religious and economic persecutions thereupon

⁵ Commons, *Races and Immigrants in America*, p. 32.

provoked the largest immigration into the colonies that occurred before the Revolution.

Entire congregations came, each headed by its pastor. Between 1714 and 1720, fifty-four ships arrived in Boston with immigrants from Ireland. It is said that in 1718 forty-two hundred of them left for America, and that after the famine of 1740 at least twelve thousand departed annually. In the half century preceding the American Revolution one hundred fifty thousand or more, perhaps two hundred thousand, came to America, and on the eve of the Revolution the stock was supposed to constitute a sixth of the population of the colonies.

✓ It is most interesting to note how the colonists felt toward these Scotch-Irish immigrants. Cotton Mather wrote in his diary on August 7, 1718: "But what shall be done for the great number of people that are transporting themselves thither from ye North of Ireland?" John Winthrop, speaking of twenty ministers and their congregations that were expected the same year, said, "I wish their coming so over do not prove fatall in the End." ✓ In 1728 an Irish archbishop lamented that, "The whole North is in a ferment." "It looks as if Ireland were to send all her inhabitants hither," ✓ complained the governor of Pennsylvania. The great mass of the Scotch-Irish came to Pennsylvania, and in such large numbers that James Logan, the Secretary of the Province, wrote to the Proprietors in alarm in 1729, "last week not less than six ships arrived, and every day two or three arrive also."

From this it is evident that they were not always welcome. At the time of their arrival the lands along the Atlantic coast were already well occupied. It is evident that they had no intention of burdening the towns; but, true to their traditions, they pushed on to the frontier, where they settled and bore the brunt of the warfare with the savage. Thus, due to the religious exclusiveness of Massachusetts and the well-settled character of the country, as well as due to a more or less general feeling of hostility of the English colonists toward certain types of immigrants,

they chose as their destination New Hampshire, Vermont, Western Massachusetts, and Maine, and, most of all, Pennsylvania, and the foothill regions of Virginia and the Carolinas. By nature typical pioneers, they pushed into western Pennsylvania, Ohio, Kentucky, and Tennessee. "They found their way over the mountain trails into the western part of the colony of Pennsylvania; they pushed southward along the fertile plateaus that terrace the Blue Ridge Mountains and offer a natural highway to the South; into Virginia where they possessed themselves of the beautiful Shenandoah Valley; into Maryland and the Carolinas; until the whole western frontier from Georgia to New York and from Massachusetts to Maine, was the skirmish line of the Scotch-Irish taking possession of the wilderness." ⁶ It was owing to them that the Quakers and Germans of Pennsylvania were left undisturbed to live up to their ideals of peace and non-resistance. No other element was so masterful and contentious. The Quakers characterized them as a "pernicious and pugnacious people who absolutely want to control the province themselves." "They fought the Indians, fought the British with great unanimity in two wars, and were in the front rank in the conquest of the West. More than any other stock has this tough, gritty breed, so lacking in poetry and sensibility, molded our national character." ⁷

Germantown, near Philadelphia, was founded in 1683 by a group of religious refugees from the Rhineland. Other German communities were started in the neighboring counties. "Chief among these German sectarians were the Mennonites, frequently called the German Quakers; the Dunkers, a Baptist sect, who seem to have come from Germany boot and baggage, leaving not one of their number behind; and the Moravians, whose missionary zeal and gentle demeanor have made them beloved in many lands." ⁸

William Penn established the colony of Pennsylvania

⁶ Orth, S. P., *op. cit.*, p. 12.

⁷ Ross, E. A., *The Old World in the New*, p. 13.

⁸ Orth, S. P., *op. cit.*, p. 13.

both as a refuge for the persecuted Quakers of England and as a real estate venture. "He was the first American to advertise his dominions widely throughout Europe, offering to sell one hundred acres of land at two English pounds and a low rental. His advertisements combined humanity and business, for they called attention to popular government and universal suffrage; equal rights to all regardless of race or religious belief; trial by jury; murder and treason the only capital crimes, and reformation, not retaliation, the object of punishment for other offenses."⁹ Although settled a half century later than the Southern and Northern Colonies, Pennsylvania soon exceeded them in population. Penn sent his agents to Germany, who persuaded large numbers of German Quakers and Pietists to emigrate to his colony. In the beginning of the eighteenth century when Louis XIV overran the Palatinate, thousands of Germans fled to England, where they were encouraged by the English government to migrate to America. Queen Anne even invited the harassed peasants of this region to come to England, whence they could be transferred to America. Over thirty thousand took advantage of the opportunity in the years 1708 and 1709.¹⁰ So great was the furor to reach the new world that "ship after ship breasted the Delaware, black with Palatines, Hanoverians, Saxons, Austrians and Swiss."¹¹

Vast numbers of these penniless Germans, who could not get to America in any other way, overcame the cost barrier, equal to about \$500 to-day, by contracting with ship owners to sell themselves into servitude for a term of years. In this way thousands of the poorer sort of Germans were induced to indenture themselves to the settlers to whom they were auctioned off by the ship captains in payment for transportation. Then, too, after 1717 multitudes of German peasants were lured to America by unscrupulous agents called "new-landers" or "soul-stealers", who, for a commis-

⁹ Commons, *op. cit.*, pp. 29-30.

¹⁰ Fiske, *The Dutch and Quaker Colonies in America*, vol. II, p. 351.

¹¹ Ross, *op. cit.*, p. 11.

sion paid by the ship master, lured the peasant to sell his belongings, scrape together or borrow what he could, and migrate. Since but few arrived in America out of debt they were sold to "soul-drivers," who took them into the interior and indentured them to farmers, usually of their own race. After serving from three to five years these redemptioners generally received fifty acres of land.

Before the Revolution not fewer than 60,000 Germans had debarked at Philadelphia, to say nothing of the others who had settled in New York in the Mohawk Valley, and thousands of others in the South. But, by far the most of them settled in Pennsylvania, where, "with an instinct born of generations of contact with the soil, they sought out the most promising areas in the limestone valleys of the eastern part of that colony, cleared the land, built their solid homes and ample barns, and clung to their language, customs, and religion so tenaciously that to this day their descendants are called 'Pennsylvania Dutch'." ¹²

The virtues of these Germans were economic virtues; invariably they have been characterized as "quiet, industrious, and thrifty." They have been characterized also as perhaps the most miserable and the most hopeful set of people ever set down on our shores. In spite of their poverty, they manifested a stern and determined spirit in their fight for their faith and home.

While it would seem from what we have written that they were welcomed into the colonies, yet this was not always the case. In 1710 several thousand of them, who had arrived in New York, were given such illiberal treatment that they moved into Pennsylvania. It is recorded that "they were welcomed by the New York colonists with privation, distress, fraud, and cruel disappointment. They were cheated and oppressed, their helplessness making them easy victims."

That they were not always welcome in Pennsylvania and that at least at various times a feeling of hostility existed against them even there is evident from the writings of

¹² Orth, S. P., *op. cit.*, p. 14.

Benjamin Franklin. In his "Observations on the Increase of Mankind," he wrote in 1751: "Why should the Palatine boors be suffered to swarm into our settlements and by herding together establish their language and manners to the exclusion of ours? Why should Pennsylvania, founded by England, become a colony of aliens, who will shortly be so numerous as to Germanize us instead of our Anglifying them?"¹² In a letter to Peter Collinson, dated May 9, 1753, he wrote, "The Germans who come hither are generally the most stupid of their own nation, and as ignorance is often attended by credulity when knavery would mislead it . . . it is almost impossible to remove any prejudices they may entertain. . . . Not being used to liberty they know not how to make a modest use of it."¹³ Unless the stream of importation could be turned from this to other colonies, they will soon outnumber us, that all the advantages we have will not be able to preserve our language and even our government will become precarious."¹⁴

On the revocation of the Edict of Nantes by Louis XIV in 1685 French Protestants fled in vast numbers to England and Holland, from which countries many of them found their way to America. But few of them came hither directly from France. South Carolina, Virginia, New York, Rhode Island, and Massachusetts were favored by these noble refugees, who included in their numbers not only skilled artisans and successful merchants, but distinguished scholars and professional men in whose veins flowed some of the best blood of France. Probably no stock ever came here so gifted and prepotent as these French Huguenots. They readily identified themselves with the industry and aspirations of the colonies and at once became the leaders in the professional and business life in their communities. Although only a few thousands in numbers, their descendants furnished 589 of the fourteen thousand and more Americans deemed worthy of a place in "Appleton's Cyclo-

¹² *Works of Benjamin Franklin*, ed. by John Bigelow, 1887, Vol. II, p. 233.

¹³ This is an argument frequently heard in recent years in favor of restriction of immigration.

¹⁴ *Ibid.*, pp. 297-299.

pedia of American Biography". In 1790 only one-half of one percent. of our people bore a French name, yet this element contributed 4.2 percent. of the eminent names in our history. "In Boston, in Charleston, in New York, and in other commercial centers, the names of streets, squares, and public buildings attest their prominence in trade and politics."¹⁵ "Like the Puritans and the Quakers, the Huguenots were of an element that meets the test of fire and makes supreme sacrifices for conscience' sake. They had the same affinity for ideals and the same tenacity of character as the founders of New England, but in their French blood they brought a sensibility, a fervor, and an artistic endowment all their own."¹⁶

In our study of the colonial opposition to immigration it is necessary that we consider one peculiar class, the indentured servants or redemptioners. They were, for the most part, colonists rather than immigrants, although many were brought from countries other than England. Some were brought under compulsion; the others came voluntarily. The former consisted of convicted criminals and kidnaped persons; the latter were respectable but destitute persons, who, despairing of success or progress in the old country, sold themselves into temporary slavery, usually for a term of five years, to pay their passage over. Many of the latter came from very good classes of society.

While there were many of these "free-willers" or "redemptioners", yet the great mass of unskilled labor necessary to clear the forests and do the other hard work so plentiful in a pioneer land came to America under duress. Boys and girls of the poorer classes were hustled on board ships and virtually sold into slavery for a term of years. Kidnaping or "spiriting" became a fine art under Charles II. Slums and alleys were raked for material to stock the plantations. Hard-hearted men sold dependent kinsfolk to serve in the colonies. About 1670 no fewer than ten thousand persons were "spirited" away from England in one year. One kidnaper testified in 1671 that he had sent five hundred per-

¹⁵ Orth, S. P., *op. cit.*, p. 16.

¹⁶ Ross, E. A., *op. cit.*, p. 10.

sons a year to the colonies for twelve years and another testified that he had sent 840 in one year. The government was slow to strike at this infamous traffic; for, as was urged in Parliament, "the plantations cannot be maintained without a considerable number of white servants."

Transportation of the idle poor was another common practice of the day. In 1663 an Act was passed by Parliament empowering Justices of the Peace to send rogues, vagrants, and sturdy beggars to the colonies. So many were sent that Dr. Johnson deemed the Americans "a race of convicts", who "ought to be content with anything we allow them short of hanging". In the first century of the colonies, gallows'-birds were often given the option of servitude in the plantations. Some prayed to be hanged instead. In 1717 the British Government entered on the policy of penal transportation, and thenceforth discharged certain classes of felons upon the colonies. It is estimated that possibly as many as fifty thousand criminals were sent to America from the British Isles, from the year 1717 until the practice was ended by the American Revolution. New England escaped these "seven-year passengers", because she would pay little for them and then she had no tobacco to serve as a profitable return cargo. It is estimated that between 1750 and 1770 twenty thousand British convicts were exported to Maryland alone. The southern colonies received a much larger number of indentured servants of all classes than the northern colonies, as the semiplantation character of the former made a much larger demand for servile labor than the farm colonies of the north.¹⁷

Ship masters made an enormous profit from this traffic, adding as much as 100 percent. of the actual cost of transportation to cover risks. As a rule the indentured servants were auctioned off to the highest bidder at a public auction. Adults were bound out for a term of three to six years, children from ten to fifteen years, and smaller children were, without charge, surrendered to masters who had to rear and board them. The lot of the indentured servant was not ordinarily a hard one. Here and there masters were cruel

¹⁷ Fiske, *Old Virginia and Her Neighbors*, Vol. II, pp. 177 ff.

and inhuman. But in a new country where hands were so few and work so abundant, it was wisdom to be tolerant and humane. Servants who had worked out their time usually became tenants or freeholders, often moving to other colonies and later to the interior beyond the fall line, where they became pioneers in their turn.

✓ Most of the colonies *bitterly resented* such cargoes, but their self-protective measures were regularly disallowed by the selfish home government. As long as they were colonies and had no independent standing, their opposition could be little more than a complaint. Later, however, when they became independent, it became a matter of international relations.

Virginia received its share of human chaff. The Council of Virginia early complained that "it hurteth to suffer parents to disburden themselves of lascivious sonnes, masters of bad servants and wives of ill husbands, and so clogge the business with such an idle crue, as did thrust themselves in the last voiage, that will rather starve for hunger, than lay their hands to labor." In 1637 the collector of the port of London averred that "most of those that go thither ordinarily have no habitation . . . and are better out than within the kingdom."

Colonial legislation to protect society against the evils growing out of the introduction into this country of foreign criminals and paupers, commenced simultaneously with the settlement of the first colonists. As early as 1639 the Pilgrim settlers of Massachusetts, at Plymouth, required the removal of foreign paupers.¹⁸ Their next step was to require indemnity from the master.¹⁹ The same power was also early exercised by Virginia, not only to guard against the importation of paupers, but others.²⁰ So it was by other colonies. Pennsylvania had, from its first settlement, a law "for imposing a duty upon persons convicted of heinous crimes and imported into the Province," and

¹⁸ *Colonial Charters, 1639 and '92*, p. 252. This would seem to be the first case of deportation from this country.

¹⁹ *Statute in William III*, Ch. 13.

²⁰ Tucker's Edition, *Black Comm.*, Vol. II, App. 33.

another "for laying a duty on foreigners and Irish servants, etc.; imported into the Province." These were, however, repealed as early as 1729-30, and a more stringent law was passed in their stead.²¹

The middle Atlantic colonies, especially Pennsylvania, suffered most from the importation of paupers and criminals. Consequently, in this colony we find the most powerful body of opinion contrary to the free admission of aliens, and the most frequent and stringent measures to control it. Many of the stock arguments against immigration on the grounds of pauperism, criminality, and inability for self support developed during this period.

We have already noted the early opposition to the coming of the Scotch-Irish and the Germans in such large numbers. We mentioned also a few laws passed to protect the colonies. It is worth while for us to analyze these and other laws further.

The act passed in 1722 in Pennsylvania, imposing a tax on every criminal landed and making the ship owner responsible for the good conduct of his passengers, was followed by numerous other laws designed to help control the immigration situation. One of the earliest instances of the use of the non-assimilation argument that resulted in legislation to restrict immigration was when an act was passed September 21, 1727, in Pennsylvania at the suggestion of the colonial governor, who feared that the peace and security of the province was endangered by so many foreigners coming in, ignorant of the language, settling together and making a separate people, or as we would say today, a foreign colony. "The act in question provided that ship masters bringing immigrants must declare whether they had permission from the court of Great Britain to do so, and must give lists of all passengers and their intentions in coming. The immigrants must take the oath of allegiance to the king, and of fidelity to the proprietary of the Province,"²²

²¹ Dallas; *Edition of Laws of Pennsylvania*, Vol. I, p. 252.

²² Fairchild, *op. cit.*, p. 45.

It seems that although this law remained in force for a while, it was virtually a dead letter, for the ship masters did not get the required license to bring in the immigrants, and yet the latter were always admitted.²³ In order "to discourage the great importation and coming in of foreigners and of lewd, idle and ill-affected persons into this province, as well from parts beyond the seas as from the neighboring colonies," a tax of forty shilling was laid on each immigrant by a law passed in 1729 which is quite an early instance of the use of a head tax as a restrictive measure.²⁴ While it was repealed within a few months it is an evidence of a colonial hostility to certain undesirable types of immigration. In order to prevent sick and diseased persons (there were many of them) from entering the colony, a law was passed requiring all ships to anchor a mile from the city until inspected by the port physician. The shipmaster was required to land all sick persons found on board at a suitable distance from the city and to convey them at his own expense to houses in the country prepared for them.²⁵ Efforts were also made to check the overcrowding of immigrants in ships, both for humane reasons and in order to reduce the number of immigrants. Facts were presented to show that whereas the German importations were at first of good class and people of substance, now they were the refuse of the country, and that "the very gaols have contributed to the Supplies we are burdened with."

We have already noted that thousands of criminals were sent to Maryland. On account of this practice, the general assembly of the province in 1676 passed an act requiring all shipmasters to declare whether they had any convicts on board, the purpose being to prohibit them from landing in the province. A fine of two thousand pounds of tobacco, half to go to the Proprietary and half to the informer, was to be imposed on anyone who attempted to import con-

²³ *Pennsylvania Colonial Records*, 2: 282 ff.

²⁴ Proper, E. E., *Colonial Immigration Laws*, p. 19.

²⁵ *Pennsylvania Colonial Records*, 4: 516.

victs.²⁶ One of the earliest instances of bonding shippers for the good conduct of their passengers was a proclamation issued December 9, 1676, by the lieutenant governor requiring all shipmasters who had landed convicts previous to the time this act went into effect, to deposit a bond of £50 for their good behavior. Any landed without this bond were to be imprisoned until it was paid.²⁷

In addition to these laws against paupers and criminals, most of the colonies passed legislation designed to prevent the entrance of religious sects who were not regarded with favor. Especially was this true of New England whose religious exclusiveness eliminated the necessity of passing other direct restrictive measures. However, an exception to this was Massachusetts which passed an elaborate immigration law in 1700 requiring shipmasters to furnish lists of their passengers, and prohibiting the introduction of lame, impotent or infirm persons, or those incapable of maintaining themselves, except on security that the town should not become charged with them. In absence of this security, shipmasters were compelled to take them back home. The statute was reënacted with amendments from time to time.²⁸

During the seventeenth and the early part of the eighteenth century, when the Dutch, Scandinavians, Swiss, Germans and French were settling in the central and southern colonies, Massachusetts was struggling by means of legislation to maintain its puritan commonwealth. If this was to be done, every stranger must be regarded with suspicion and distrust. So we find the General Court in 1637 ordering that no town or person in the colony should receive or entertain any new comer for longer than three weeks without permission of the authorities. The severe laws passed after 1656 were designed to prevent the coming of the Quakers. These laws and the laws against the French Jesuits undoubtedly kept out not only many Quakers, but other

²⁶ *Archives of Maryland*, 2: 540.

²⁷ *Ibid.*, 15: 36.

²⁸ Proper, E. E., *Colonial Immigration Laws*, Columbia College Studies, Vol. XII, No. 2, p. 29.

Protestants from Great Britain and Western Europe, and Catholic laymen from Ireland and the Continent.”²⁹

The class most discriminated against for religious reasons was the Roman Catholic,³⁰ for most of the colonies passed harsh legislation against them. Virginia, and all the New England colonies except Rhode Island, had laws to prevent the Quakers from entering.³¹ A fine of £100 was imposed on anyone bringing a Quaker into Virginia, and those already settled there were ordered to depart on pain of punishment. Rhode Island, Pennsylvania and Maryland started on the basis of religious tolerance. However, in Maryland a prejudice against Roman Catholics soon manifested itself and found expression in legislation.³² One such law was passed in 1699, being entitled, “An act for Raising a Supply toward defraying of the Publick Charge of this Province and to prevent too great a number of Irish Papists being imported into this Province.” Massachusetts discouraged the coming of all who did not agree with her policy of ecclesiastical domination.³³ Virginia, whose founders were avowed Episcopalians, wanted no non-Conformists, and took active measures to enforce this policy.³⁴ Statutes against the Catholic immigration vary in purpose from absolute prohibition in the Puritan colonies, to petty regulations and annoyances as practiced in some of the middle colonies. These restrictions took the form of a duty on Irish Catholic servants; a positive prohibition of the Roman worship; a double tax on their lands; and the “abjuration oath”, which practically excluded members of this faith, unless they chose to break their vows.³⁵ Virginia prohibited from settling in the Province all persons who “affected the superstitions of the Church of Rome.”

From what has been written it is evident that there was

²⁹ Report of the Massachusetts Commission on Immigration created under an Act of the State approved May 2, 1913, page 25.

³⁰ Proper, E. E., *op. cit.*, p. 13.

³¹ Proper, E. E., *op. cit.*, pp. 25, 63.

³² Proper, E. E., *op. cit.*, p. 13.

³³ Winthrop, *Life and Letters of Gov. Winthrop*, 182.

³⁴ Hening's *Statutes*, I, 155.

³⁵ Proper, E. E., *op. cit.*, p. 18.

at times a feeling of hostility to immigrants even in colonial days, especially against certain religious sects and against the pauper and criminal classes. It is evident also that virtually all of the colonies received their share of human chaff despite their vigorous protests, for the English Government paid little attention to these colonial self-protective measures. But the important thing to note in tracing the development of opposition to immigration is that many of the thoughtful people of those days were against immigration even when there was land in abundance and opportunity beckoned on every hand.

It is astonishing how quickly the "yellow streak" in the population faded. Many of these people belonged to the class of the unfortunate rather than the vicious and were the product of a passing state of society. No doubt the worst felons were promptly hanged, so that those who were transported—despite the protests of Virginia and the other colonies—were such as excited the compassion of the court in an age that recognized nearly three hundred capital offenses. When we consider the fact that many were the victims of bad surroundings rather than born malefactors, that the larceny of a few shillings was punishable by death, and that many of the victims were deported because of religious differences and political offenses, or kidnaped and brought over to be sold as indentured servants, then the stigma of crime is erased. Many humane judges welcomed exile as an alternative to the death penalty. Under the regenerative stimulus of opportunity many of these persons reformed, and, therefore, one does not wonder that some of these transported persons rose to places of distinction and honor in the colonies and that many of them became respected citizens. Indeed, Maryland recruited her school masters from among their ranks. Thus, the bad strains tended to run out, and in the making of our people the criminals had no share at all corresponding to their original numbers. It was easy to make good in those days for land was plentiful, labor scarce and opportunity beckoned on

every hand. But today the immigrant's labor is usually considered no more than any other commodity to be bought at the lowest price, and opportunity is like a jack-o-lantern or like the pot of gold at the foot of the rainbow.

It is also important to note that out of this colonial opposition to immigration most of the stock arguments against unrestricted immigration were developed, and some of the later important legislative expedients for restriction, such as the head tax, the bonding of shippers, the exclusion of paupers and criminals, etc., were put into practice. One present-day argument against immigration was not then used, viz., an opposition to immigration on the grounds of the economic competition of the newcomer with the older residents, which, considering the economic opportunity of those days, is self-explanatory.

In addition to noting, as we did at the opening of this chapter, that the total number of persons coming to the colonies during this period was slight when compared to present day immigration, it is also necessary to point out that the population, while containing a number of diverse elements, was still predominantly English when the Revolution began, and that those who were not English were almost wholly from races closely allied to the English. These were principally the Dutch, Swedes, Germans, and Scotch-Irish, which with the English, as Professor Commons has pointed out, "were less than two thousand years ago one Germanic race in the forests surrounding the North Sea." He also adds the significant statement that "It is the distinctive fact regarding colonial immigration that it was Teutonic in blood and Protestant in religion."³⁶ "This Protestantism was important because of the type of mind and of character that Protestantism at that day represented. It stood for independence of thought, moral conviction, courage, and hardihood."³⁷

When Father Jogues visited New Netherlands in 1644 he

³⁶ Commons, *op. cit.*, p. 27.

³⁷ Fairchild, *op. cit.*, p. 54.

found that eighteen different languages were spoken in Manhattan.³⁸ In New Haarlem, in 1661, the male population consisted of Frenchmen, Walloons, Dutchmen, Danes, Swedes, and Germans. It was said that every language of Europe could be found in Pennsylvania. Professor McMaster, writing of the later colonial period, says, "Diverse as the inhabitants of the states were in occupations, they were not less diverse in opinions, in customs and in habits. . . . Differences of race, differences of nationality, of religious opinions, of manners, of tastes, even of speech, were still distinctly marked." Yet as a result of the common racial character of the migration, assimilation was easy, quick, and complete and all diversity was short-lived. Thus, "by the time of the Revolution there was a definite American population, knit together by over two centuries of toil in the hard school of frontier life, inspired by common political purposes, speaking one language, worshipping one God in divers manners, acknowledging one sovereignty, and complying with the mandates of one common law."³⁹

In summarizing our study of the colonial opposition to immigration we are forced to conclude that the anti-immigration laws passed by the colonial legislatures were, broadly speaking, very meager in their effect as restrictive or prohibitive measures. Yet to preserve the ideals which led to the settlement of the colonies, it seemed to many of them necessary to ascertain carefully the character of the prospective settlers and to exclude those whom they, for any reason, deemed unfit to become associates in their project. The rigorous measures of the New England colonies practically excluded immigrants from other nations than England, and even limited those from the mother country to persons of a definite political and religious belief. This colonial opposition to immigration had its effect in the other colonies also, for it not only kept out or at least checked certain undesirable classes, but those who entered

³⁸ Father Jogues, *Novum Belgium* in Jameson, *Narrative of New Netherlands*, 1609-1664.

³⁹ Orth, S. P., *op. cit.*, p. 23.

were sometimes forced to move on to the frontier. It must not be inferred then from the statement that the results of restriction were meager, that these laws were therefore useless. On the contrary, they were an important factor in the development of colonial life. It was partly on account of these restrictions and prohibitions that the different colonies were enabled to maintain their characteristic existence and preserve their political and religious ideals. One commentator has expressed the view that "it was due largely to these very measures that the colonies, especially Virginia and New England, have given to this country the ideals of government and social order that have made America what she is today. *It was largely because of these measures that there has been a Massachusetts and a Virginia.*"⁴⁰

⁴⁰ See Proper, E. E., *Colonial Immigration Laws*.

CHAPTER II

OPPOSITION TO AND REGULATION OF IMMIGRATION 1775-1882

STATE regulation prior to 1792—Washington's Policy during Revolutionary War—His later views—Views of Adams, Franklin and Jefferson—Constitutional provisions concerning foreigners—Early naturalization laws—Alien and Sedition Laws—Early nineteenth century views—State legislation—Resolutions in Congress—Pauper and criminal immigration—Consular Reports—Other causes of hostility to immigration—Riots against Catholics and Germans—Native Americanism—Presidential elections of 1844 and 1852—The American Party—Opposition in the fifties—Obstacles to Federal legislation.

The hostility to immigration did not cease with the American Revolution. Many of the commonwealths continued to legislate on immigration during the Revolution and after peace was declared. Massachusetts, by a law in 1783, prohibited the return of refugees, and so did several other states. The first naturalization laws passed by Congress, recognized this exercise of power and expressly provided that such persons could not become naturalized without the special consent of those states which had prohibited their return.¹

On September 16, 1788 the Congress of the old Confederation unanimously adopted the following resolution: "Resolved, That it be, and it is hereby, recommended to the several states to pass laws for preventing the transportation of convicted malefactors from foreign countries into the United States."²

Pursuant to this recommendation of the Continental Congress, the states passed laws in conformity therewith. Virginia passed a law on November 13, 1788 forbidding masters of vessels from landing convicts, under a penalty

¹ Acts of 1790 and '95, U. S. Laws, Vol. I, pp. 104, 415.

² Journal of Congress for 1788, p. 867.

of fifty pounds. South Carolina,³ Georgia and New York passed similar laws the same year. Massachusetts followed the example in 1791. Pennsylvania passed an act, March 27, 1789 providing "that no captain of a vessel, or other person, shall knowingly or willingly bring, import, or send, or so cause to be, or be aiding or assisting therein, into this Commonwealth, by land or water, any felon, convict, or person under sentence of death, or any other disability, incurred by a criminal prosecution or who shall be delivered, or sent to him or her from any prison or place of confinement in any place out of the United States." ⁴

During the Revolution the Continental Congress established the policy of not employing any but native born citizens in the foreign service of the country. The same policy was pursued, as far as practicable, by Washington during the Revolution. On July 7, 1775 he sent out the instruction that "no man shall be appointed as a sentry who is not A NATIVE of this country." On July 10, 1775 he ordered the recruiting service "not to enlist any person who is not an *American* born, unless such person has a wife and family, and is a settled resident in this country." On May 7, 1777 he sent word to Richard Henry Lee, "It is by the zeal and activity of our own people that the cause must be supported, and not by a few hungry adventurers." On March 17, 1778 he ordered one hundred men to be chosen and annexed to the guard of the commander-in-chief. In his orders he instructed that "*They Must Be American Born.*" On July 24, 1778, he wrote to Gouverneur Morris, "I do most devoutly wish that we had not a single foreigner amongst us, except the Marquis de Lafayette." ⁵

After the adoption of the constitution, in his first annual

³ Public Laws of the State of South Carolina to the Year 1790, Inclusive, p. 464.

⁴ Dallas, Edition of Laws of Pennsylvania, Vol. II, p. 692. Or, Pennsylvania's Statutes at Large from 1682 to 1801, XIII, 261-62.

⁵ The policy of "America for Americans" thus seems to have had its origin at the very beginning of our Independence. The term itself was in common use prior to 1850. See Sanderson, J. P., *Republican Landmarks*, Ch. 39 (1856), in which the term is used frequently. See also page 334 of the same book. Busey, S. C., *Immigration—Its Evils and Consequences* (1856), should likewise be read in this connection.

message to Congress, Washington said, "Various considerations render it expedient that the terms on which foreigners may be admitted to the rights of citizens, should be speedily ascertained by a uniform rule of naturalization." But in regard to the employment of foreign-born citizens in the public service, he does not seem to have changed the views entertained by him during the Revolution, for in a letter dated January 20, 1790 to J. Q. Adams he stated, "You know, my good sir, that it is not the policy of this government to employ foreigners when it can well be avoided, either in the civil or military walks of life." Concerning immigration itself, President Washington wrote to John Adams, November 17, 1794, "My opinion with respect to immigration is, that except of useful mechanics and some particular description of men and professions there is no use of encouragement." In a letter to Sir John St. Clair, of England, he declared his opposition thereto in the following very positive terms: "I have no intention to invite immigrants, even if there are no restrictive acts against it. I am opposed to it altogether." Then in a letter to Patrick Henry, dated October 9, 1795, he wrote, "In a word, I want an *American* character, that the powers of Europe may be convinced we act for *ourselves* and not for others. This, in my judgment, is the only way to be respected abroad and happy at home."

John Adams entertained similar views. In a letter to Christopher Gadsden he gives expression to the following sentiments: "Foreign meddlers, as you properly denominate them, have a strange, a mysterious influence in this country. Is there no pride in American bosoms? . . . The plan of our worthy friend, John Rutledge, relative to the admission of strangers to the privileges of citizens, as you explain it, was certainly prudent. Americans will find that their own experience will coincide with the experience of all other nations, and foreigners must be received with caution, or they will destroy all confidence in government."

Benjamin Franklin, writing in the American Museum for the year 1787, stated that the only encouragements

which this government holds out to strangers are such as are derived from good laws and liberty. In a paper read at his home on April 20, 1787, the author pointed out that we have a right to restrict immigration whenever it appears likely to prove hurtful and he warned the states against permitting the importation of criminals from European countries. With a somewhat unwarranted optimism he added, "It is now not likely that these states will be insulted with transportations of this sort, directly ordered from any other sovereign power."

Although the author of the Declaration of Independence and of the liberal naturalization law of Virginia, enacted in May, 1779, in which he asserted the natural right of expatriation, Thomas Jefferson was opposed to immigration and asserted the right of the states to prohibit and regulate it. That immigration was full of menace and that it was considered a serious problem by the "Sage of Monticello" is evident from the following statements. In his Notes on Virginia, first printed in 1782, Jefferson wrote thus: "But are there no inconveniences to be thrown into the scale against any advantage expected from a multiplication of numbers by the importation of foreigners? It is for the happiness of those united in society to harmonize as much as possible in matters which of necessity they must transact together. Civil government being the sole object of forming societies, its administration must be conducted by common consent. Every species of government has its specific principles. Ours, perhaps, are more peculiar than those of any other. It is a composition of the freest principles of the English Constitution with others derived from natural right and natural reason. To these nothing can be more opposed than the maxims of absolute monarchies. Yet, from such we are to expect the greatest number of immigrants. They will bring with them the principles of the governments they leave, or if able to throw them off, it will be in exchange for an unbounded licentiousness, passing, as usual, from one extreme to the other. It would be a miracle were they to stop precisely at the point of

temperate liberty. These principles, with their language, they will transmit to their children. In proportion to their numbers, they will share legislation with us. They will infuse into it their spirit, warp or bias its direction, and render it a heterogeneous, incoherent, distracted mass.”⁶

He was also the author of a petition to the Virginia Legislature, presented in 1797, and signed by citizens of Albemarle, Amherst, Fluvanna, and Goochland counties, praying that none but native born citizens should be eligible as jurors in grand or petty civil or criminal cases.⁷

On another occasion he wrote, “I hope we may find some means in the future of shielding ourselves from foreign influence—political, commercial, or in whatever form attempted. I can scarcely withhold myself from joining in the wish of Silas Dean, that there were an ocean of fire between this and the old world!”

While minister to France, in 1788, he wrote a letter to Mr. Jay, in which he stated, “*Native citizens*, on several valuable accounts, are preferable to *aliens*, or *citizens alien born*. . . . To avail ourselves of native citizens, it appears to me advisable to declare by standing law that no person, but a native citizen, shall be capable of the office of consul.” Then years later he asks “whether it is desirable for us to receive the dissolute and demoralized handicraftsmen of the old cities of Europe.”⁸ Being a serious advocate of restriction, Jefferson merely asserted a natural right of emigration,—viz, expatriation. However, being the leading advocate of state rights Jefferson was uncompromisingly hostile to legislation by the Federal government on the subject. The important thing to note, however, is that he was hostile to immigration and favored restriction.⁹

It would seem that the views of these leaders can be taken as representative of the prevailing attitude toward immigration among the body of the American people at

⁶ Notes on Virginia, 152.

⁷ Jefferson's Writings, Vol. IX, p. 453.

⁸ Letter to Lithgow, January 4, 1805, in Works, Vol. II, p. 270.

⁹ Contrast with this the erroneous views set forth by Mary Antin in her little book, “They Who Knock at Our Gates.”

that time. The debates in the Constitutional Convention of 1787 disclose some fear of the political influence of the foreign settler. These fears of and this hostility to foreigners found expression in various clauses of the constitution,* Article I, Section 2 of the constitution specifies that "No person shall be a Representative who shall not have been seven years a Citizen of the United States." Article I, Section 3 states that "No person shall be a Senator who shall not have been nine years a citizen of the United States." A naturalized person may thus become a Representative or a Senator only after a citizenship of seven and nine years respectively. Still more clearly is the distrust of the foreigner expressed in the clause in Article II which debars foreign-born citizens from the offices of President and Vice-President. It reads, "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President." Another reference in the constitution to the subject, which we shall discuss later, is Article I, Section 9, which reads, "The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person."

An examination of the history of Congressional legislation on the subject of the naturalization laws must satisfy everyone that the statesmen of the Revolution did not entertain any idea that aliens had an *absolute right* to participate in the highest prerogatives of the government, but acted on the subject as a matter of expediency, and treated it as a privilege conferred. The period of residence required for naturalization was set at two years by the Act of 1790, but this was raised to five years in 1795. The Act of 1798 required a residence of fourteen years, with a declaration of intention at least five years before admission, to

* See Kapp, F., "Immigration," Ch. IX, *Immigration as Affected by the Constitution of the United States* (1870).

be admitted to citizenship. Aliens arriving in the United States after the passage of the act had to be registered.¹⁰ Those who were enemies could never become citizens; even those who were proved to be friends were compelled, before taking the oath of citizenship, to produce certificates of registration in proof of residence in the country for fourteen years. However, this was too drastic to be expedient, so at the suggestion of President Jefferson, the residence was reduced by the naturalization law of 1802 to five years. With this one exception, there was from the passage of the first act in 1790 down to 1824, a uniform and constant advance in the demands of the laws passed by Congress on the subject upon those on whom they authorized the privilege of citizenship to be conferred. From these laws and from the discussion connected with them it would seem that there existed at that time a sentiment against the alien within our country.

During the consideration of the bill to establish a uniform rule of naturalization in 1790 there was a long and animated discussion in the House of Representatives, in which the views of most of the leading members were elicited.¹¹ The discussion arose on a motion made by Thomas T. Tucker, of South Carolina, to permit aliens to hold lands without having resided any definite period in the country, though he accompanied his motion with the declaration that "he had no objection to extending the term . . . to three years."

Roger Sherman, of Connecticut, one of the framers of the Federal Constitution, said:

"He presumed it was intended by the Convention, who framed the Constitution, that Congress should have the power of naturalization, in order to prevent particular states receiving citizens, and forcing them upon others who would not have received them in any other manner."

James Madison, of Virginia, also one of the framers of the Constitution, and who was foremost among those in

¹⁰ Annals of Congress of 1797-1799, Vol. II, p. 1566.

¹¹ Annals of Congress, Vol. I, pp. 1146 to 1165.

favor of liberal legislation for citizens of foreign birth, frankly said, "when we are considering the advantages that may result from an easy mode of naturalization, we ought also to consider the cautions necessary to guard against abuses." He concluded his remarks as follows:

"I should be exceedingly sorry, sir, that our rule of naturalization excluded a single person of good fame that really meant to incorporate himself into our society; on the other hand, I do not wish that any man should acquire the privilege, but such as would be a real addition to the wealth or strength of the United States."

James Jackson, of Georgia, was not only in favor of a long residence, but anxious to guard against the admission of improper persons. He said:

"He hoped to see the title of a citizen of America as highly venerated and respected as a citizen of old Rome. I am clearly of opinion, that rather than have the common class of vagrants, paupers, and other outcasts of Europe, that we had better be as we are, and trust to the natural increase of our population for inhabitants."

Theodore Sedgwick, of Massachusetts, said:

"He thought Congress might use their discretion, and admit none but reputable citizens, such only were fit for the society into which they were blended."

Pending the consideration of the resolution that later resulted in the Naturalization Act of 1798, an animated debate resulted.¹² Mr. Harper, of Maryland, moved as follows: "That provision ought to be made by law for preventing any person becoming entitled to the rights of a citizen of the United States, except by birth."

H. G. Otis, of Massachusetts, said:

"He himself had not the smallest doubt as to the constitutionality of restricting aliens in the way proposed. He believed that Congress, could, if they thought proper, make a residence of forty or fifty years necessary before an alien should be entitled to citizenship, which would extend to the whole life of a person, and prove an effectual exclusion."

¹² Annals of Congress of 1797-99, Vol. II, p. 1568 to 1580.

Samuel Sitgreaves, of Pennsylvania, said:

"They might avoid any constitutional embarrassment by extending the time of residence of aliens so far as to prevent them from ever becoming citizens, by which means persons who could not be considered as having a common interest with the citizens of the country, would be effectually excluded from holding offices in the government."

James A. Bayard, of Delaware, said:

"Aliens cannot be considered as members of the society of the United States; our laws are passed on the ground of our policy, and whatever is granted to aliens is a mere matter of favor; and, if it is taken away, they have no right to complain."¹³

Following the passage of the Naturalization Act of 1802 various efforts were made to amend the law so as "to secure more effectually to the native citizens the right of government." Such a memorial was presented to the second session of the twenty-fifth Congress by John M. Patton, of Virginia, from the Native American Association of Washington City, signed by nearly a thousand persons.¹⁴

A bill introduced into the first session of the twenty-sixth Congress by A. C. Hand, of New York,¹⁵ and another introduced August 1, 1842 by J. P. Walker of Wisconsin,¹⁶ came to naught.

Though he himself was opposed to it, on June 1, 1844 James Buchanan, of Pennsylvania, presented in the Senate a memorial from the citizens of Philadelphia, which would have amended the naturalization laws to require all foreigners to reside twenty-one years in the country before admitting them to the same privileges as native citizens.

On June 7, 1844 Senator W. S. Archer, of Virginia, in presenting a similar petition, said:

"There was, he thought, a growing combination of circumstances, which furnished ample ground for the con-

¹³ Great use has been made of such a defense for restriction of immigration in recent years.

¹⁴ Congressional Globe 1837-8, p. 187.

¹⁵ Congressional Globe 1840-41; pp. 23, 36, 41.

¹⁶ Congressional Globe 1841-42; p. 817.

clusion, that the great mass of uneducated foreigners, wholly ignorant of the nature and value of our institutions, annually pouring into the country, could not, within the short period of five years, fixed by the present law, become fit to exercise, with a due sense of their value and responsibility, the rights and privileges of native born citizens. The premature exercise of such rights had grown to an evil of great magnitude, of which there had, unhappily, but too recently, been a painful demonstration.”¹⁷

At the second session of the twenty-eighth Congress various ineffectual efforts were made in the House of Representatives to secure amendments to the naturalization laws.¹⁸

During the early part of the same session, Henry Johnson of Louisiana, speaking in the Senate in favor of a resolution he had introduced to modify the naturalization laws so as to extend the time for foreigners to become citizens, to prevent frauds, etc., said:

“It is, indeed, a lamentable fact, that most of the foreigners who immigrate to this country are profoundly ignorant of the nature of the government and of its political institutions, and are mere instruments in the hands of designing men, to be used at the elections for the most corrupt purposes—All parties are equally interested in guarding against a repetition of the abuses complained of, which, if not prevented in the future, may ultimately destroy our government.”

In November, 1844 Daniel Webster addressed a meeting of the Whigs of Boston in which he took ground in favor of an alteration of the naturalization laws.¹⁹ He said:

“The result of the recent elections, in several States, has impressed my mind with one deep and strong conviction; that is, that there is an imperative necessity for reforming the naturalization laws of the United States. The preservation of the government, and consequently the in-

¹⁷ Congressional Globe 1843-44, p. 658.

¹⁸ Congressional Globe 1844-45, pp. 64, 150.

¹⁹ Niles Register, Vol. LXVII, p. 172.

terest of all parties, in my opinion, clearly and strongly demand this. . . . Fellow citizens, I profess to be a lover of human liberty. But I profess my heart, my reputation, my pride of character, to be an American."

The evidence presented by these memorials, bills, speeches, etc.—nor have all of them been mentioned here,—from all sections of the country and made by the leading men of the day, seems to indicate that a considerable element of the population was gravely concerned over the problems that had resulted from immigration into the country prior to 1850.

The Alien and Sedition laws passed in 1798 during the administration of John Adams, bear further testimony to the hostility felt toward the alien. Under the Alien Law, the President of the United States was invested with power to send away all such aliens as he judged dangerous to the peace and safety of the country, or had reasons to think were hatching treason or laying plots against the Government. Imprisonment for three years and deprivation of the privilege to become a citizen were the punishments provided for anyone so ordered to depart who was found at large without a license to remain. Those thus punished were also subject to removal from the country on the order of the President, and if they voluntarily returned they could be reimprisoned for such time as the President thought the public good required. In order that no alien might escape, sea captains were to make reports in writing of the names, ages, and places of birth of all foreigners brought over in their ships. This act was a result of transitory unsettled conditions, particularly the expectation of a war with France, and contained a proviso that it should expire two years after passage. But it contains an important permanent principle which has been made much of in recent years, viz.—the right of deportation.²⁰

Even more stringent than these laws was another en-

²⁰ Every standard American History deals at length with the Alien and Sedition Laws.

acted in the same year which gave to the President the right, in case of war declared or invasion threatened, to seize, secure, or send away all resident aliens, whether natives or adopted citizens, of the hostile nation.

"When we recall the conditions existing at the time of the passage of the Alien and Sedition Acts—a young Republic with a new form of government surrounded by avowed and hostile enemies—perhaps there was some justification for this severe attitude toward foreigners in the country, which the Federal Government adopted at the outset."²¹ However, the important thing to note in this connection is that present day hostility to immigration is not a new thing. The views and statutes to which we have referred have given tone and color to much of the opposition that has manifested itself from then to the present day. Historical facts thus seem to refute the contentions of the past and present advocates of unrestricted immigration that we have always welcomed the immigrant with outstretched arms.

That most of this early feeling of opposition to the influx of foreign elements was due to an anticipation of political dangers is evident from the following statements. When a proposal was made in 1804 in Connecticut to extend the franchise, it brought from the Federalists the charge that "Never yet has an extension of the franchise failed to bring with it those triple horrors: Catholic, Irishmen, and Democratic rule." "Give to every man a vote and the ports of Connecticut would be crowded with ships swarming with patriots and rapparees fresh from the bogs of Erin, elections would be decided by the refuse of jails and gibbets, and factious men from Ireland would inflict on Connecticut just such a government as they had already inflicted on Delaware, on Pennsylvania, on New York."²²

The Hartford Convention in 1814 desired to make every person thereafter naturalized ineligible to hold any civil office under the federal government. The Convention held that the population of the United States was then "amply

²¹ Warne, *The Tide of Immigration*, p. 236.

²² McMaster, *History of the People of the United States*, Vol. III, p. 192.

sufficient to render this nation in due time sufficiently great and powerful."

In 1807 immigrants were characterized as "the vagabonds and wandering felons of the universe" and "hordes of vulgar Irish scarcely advanced to the threshold of civilization, all the outcast villains, all the excrescences of gouty Europe" who descend upon our shores and through naturalization are outwardly transformed "from aliens to natives—from slaves to citizens."²³

On July 4, 1815, James Buchanan delivered an oration in the city of Lancaster upon the subject of foreign influence and upon the policy that the United States ought to pursue toward foreign nations, in which he said, "Above all, we ought to drive from our shores foreign influence, and cherish exclusively American feelings. Foreign influence has been in every age, the curse of republics."

William H. Crawford, while Secretary of War under the administration of James Madison, made a report on Indian Affairs in March, 1816, in which he stated, "It will redound more to the national honor to incorporate, by a humane and benevolent policy, the natives of our forests in the great American family of freedom, than to receive, with open arms, the fugitives of the old world, whether their flight has been the effect of their crimes or their virtues." The expression of these sentiments caused him to be made the object of bitter assault from the foreigners and it was believed at the time, mainly defeated his nomination for the Presidency in favor of Monroe. Thus did foreign influence make itself felt early in our political history as a Republic.

In a letter addressed to Dr. Coleman, dated August 26, 1824, General Jackson wrote, "In short, sir, we have been too long subject to the policy of British merchants. It is time we should become a little more *Americanized*, and instead of feeding paupers and laborers of England, feed our own; or else, in a short time, by continuing our present policy, we shall be paupers ourselves."

With the growth of manufactures, there arose a demand

²³ Warne, *op. cit.*, p. 237.

for laborers, particularly skilled laborers, who knew the technique of industry. Since it was extremely difficult to persuade any great number of Americans to forego the possibility of becoming independent landowners and cultivators in order to become hired workers in somebody else's factory, there arose a demand for foreign artisans. Despite this demand from the manufacturers, various states passed laws after 1820 to restrict at least certain types of immigrants.²⁴

New York passed on February 11, 1824,²⁵ "an act concerning passengers in vessels coming to the port of New York." It provided "that every master or commander of any ship or other vessel arriving at the port of New York from any country out of the United States, or from any other of the United States than this state, shall within twenty-four hours after the arrival of such ship or vessel in the said port, make a report in writing, on oath or affirmation, to the Mayor of the City of New York, or to the recorder of the said city, of the name, place of birth, and last legal settlement, age and occupation of every person who shall have been brought as a passenger in such ship or vessel on her last voyage from any country out of the United States into the port of New York, and from any of the United States, other than this state. . . . It shall be lawful for the said mayor or recorder to require every such master or commander of any such ship or vessel to be bound with two sufficient sureties, not exceeding three hundred dollars for each passenger not being a citizen of the United States. . . . Every person not being a citizen of the United States, who shall enter the said city with the intention of residing therein, shall within twenty-four hours thereafter make a report of himself in writing, on oath or affirmation, to the mayor, or to the recorder of the

²⁴ If the absence of governmental efforts to regulate and control immigration may be called a policy of "free" immigration, then it would seem, according to Fairchild, that this policy ended at this time when the states began to legislate on the subject under their police powers. See Fairchild, *Immigration*, pp. 31-32; also quoted, *ante*, Chapter I.

²⁵ New York Laws, 1824, Ch. 37.

said city, stating his name, age, and occupation, the name of the ship or vessel in which he arrived, the time and place when and where he landed, and the name of the commander of such ship or vessel, under the penalty of one hundred dollars."

In like manner Massachusetts had passed "an act to prevent the introduction of paupers from foreign ports or places" on February 25, 1820.²⁶ Under this law she also required from the master of the vessel a list of the names and places of residence of all passengers. He was likewise compelled to give bond with sufficient sureties of any passengers liable to become chargeable for their support to the commonwealth, the bond not to exceed five hundred dollars for each passenger.

Maryland passed "an act relating to the importation of passengers, March 22, 1833."²⁷ This law contained similar provisions. There was a requirement that the master of the vessel give to the mayor or register of Baltimore, within twenty-four hours, a list containing the name, age, and occupation of every alien brought in. The master of the vessel had the option of paying in a dollar and a half for each alien or of giving two sufficient sureties, to be approved by the mayor or register, for a sum not exceeding one hundred and fifty dollars for each passenger.

In these various ways various states undertook to check immigration and to eliminate the undesirable classes.²⁸ That such undesirable classes were getting in, despite these laws, is evident from the records of those days, and the evils resulting therefrom soon stirred the native population to new efforts.

The exportation of convicts and paupers into the United States by some of the European governments had as early as 1836 created evils that were so seriously felt in many of

²⁶ Massachusetts Laws, 1820, Chap. 290.

²⁷ Maryland State Laws, 1833, Chap. 303.

²⁸ See Abbott, "Historical Aspects of the Immigration Problem" (1926) for many select documents relating to the subject matter of this chapter. See also Bromwell, W. J., *History of Immigration to the United States*, pp. 198 ff. (1856).

our large cities that the municipal authorities of Boston, New York, Baltimore and New Orleans were forced to take steps to guard against it.

In Massachusetts the subject was brought up in the legislature in 1836, which, after some consideration, adopted the following: "Resolved, That it is expedient to instruct our Senators, and request our Representatives in Congress to use their endeavors to obtain the passage of a law to prevent the introduction of foreign paupers into this country, and to favor any other measures which Congress may be disposed to adopt to effect this object."

This resolution was presented in the United States Senate May 2, 1836, by John Davis, who availed himself of the occasion to submit some startling facts on the subject.²⁹ The following are extracts from it:

"In 1833 the King appointed a commission, with large powers, to collect evidence and report to Parliament (on pauperism). . . . The commissioners discovered that some of the parishes had, of their own accord, and without any authority in law, adopted the plan of ridding themselves of the evil by persuading the paupers to immigrate to this side of the Atlantic. And whom, Mr. President, did they send? The most idle and vicious; furnishing them with money, besides paying their passage, and then leaving them on this continent, either to reform or to rely on the people here for support. The commissioners strongly recommended to Parliament to adopt it, and to authorize the parishes to raise money by taxes for this purpose. They proposed, too, that the most idle, debauched, and corrupt—the incurable portion—should be selected for this purpose, while the better portion should be left, to be reclaimed when detached from the force of evil counsel and evil example. . . . Pauper immigrants have been repeatedly found in the House of Industry in Boston, with the very money received from the parish concealed about them, and in some instances, to prevent detection, sewed in their clothes. Out of 866 persons received into that place during

²⁹ Congressional Debates of 1835-6, Vol. XII, part 2, p. 1378.

the last year, 516 were foreigners. . . . Massachusetts has attempted to modify the evil by countervailing legislation, by requiring bonds from the masters of vessels bringing foreign passengers, conditioned that for a period they shall not become chargeable to the public. This, however, proves inadequate. . . .

"Now, sir, is it just? Is it morally right for Great Britain to attempt to throw upon us this oppressive burden of sustaining her poor? Shall she be permitted to legislate them out of the kingdom, and to impose on us a tax for their support, without an effort on our part to countervail such a policy? Would it not be wronging our own virtuous poor to divide their bread with those who have no just or natural claims upon us? And above all, sir, shall we fold our arms and see this moral pestilence sent among us to poison the public mind and do irremediable mischief?"

During the summer of 1837 the city councils of Boston directed the then Mayor to confer with other municipal authorities on the subject with a view of effecting their coöperation in memorializing Congress for some remedial legislation to arrest the growing evil.³⁰ In Baltimore the same evil was experienced to an alarming extent at the same time. A ship load of 260 Hessian convicts were brought into port with manacles and fetters remaining on their hands and feet until within the day of their arrival. Mayor Smith was informed by the authorities at Washington that there was no remedy, and so he had to permit the convicts to be landed, and turned loose to prey upon society.³¹

In a Baltimore paper for July 3, 1830, we find an editorial,³² from which the following are extracts:

"Infamous conduct!—The ship 'Anacreon' arrived at Norfolk last week from Liverpool, with 168 passengers, three-fourths of whom were transported English paupers! And a great part of these are from 50 to 60 years of age—some older! . . . If there was barbarity enough in the

³⁰ Niles' Register, Vol. LV, p. 46.

³¹ *Ibid.*, Vol. LV, p. 44.

³² *Ibid.*, Vol. XXXVIII, p. 335.

United States to ship off our old worn-out negroes to England, by cargoes, would their landing be permitted? We would not be cruel—but must resist, to the utmost possible point, such infamous speculations on our pockets. John Bull has squeezed the orange, but insolently casts the skins in our faces. . . . The landing of such must be prevented; and we trust that the general assembly of Maryland will adopt some strong regulations on the subject, and prevent the taxation of the good people of this state for the support of the British government.”

An investigation by the municipal government of New York City in 1837 disclosed the fact that 60,541 passengers arrived in New York that year and that the almshouse was full, containing 3,074 persons, of whom three-fourths were foreigners. The report to the Mayor stated, “In fact our public charities are principally for the benefit of these foreigners; for of 1,209 persons admitted into the hospital at Bellevue, 982 were aliens.”

A memorial of the corporation of the city of New York, January 25, 1847, stated that within the last year the ships “Sardinia” and “Atlas” from Liverpool arrived in New York, one with 294 and the other with 314 steerage passengers, all paupers, sent by the parish of Groszimmern, Hesse Darmstadt, to which they belonged and by which their expenses were paid. Two hundred and thirty-four of these immigrants eventually found their way into the New York almshouse.³³

On January 19, 1839, Niles’ Register reported a crowd of paupers which had arrived in New York from England, whose passage had been paid by the overseers of the poor at Edinburgh. The majority of them were still wearing the uniform of the poorhouse. This resulted in such serious objections that the consignees of the vessel finally agreed to take them back to Europe and to reimburse the city for the expenses incurred on their account.

Other numbers of the Register contain similar instances. In fact the situation was getting serious for many cities.

³³ Executive (House) Doc., 29th Cong., 2nd Ses., 54.

The evils attendant upon immigration unregulated by the Federal Government made themselves felt to such an extent that on July 4, 1836, the United States Senate passed a resolution directing the Secretary of the Treasury to collect such facts as could be obtained respecting the deportation of paupers from Great Britain and other places, "ascertaining, as nearly as possible, to what countries such persons are sent, where landed and what provision, if any, is made for their future support."

On April 30, 1838, the House of Representatives adopted this resolution: "Resolved, That the President of the United States be requested to communicate to this House copies of all correspondence and communications which have passed between this and any foreign governments, and the officers and agents thereof, relating to the introduction of foreign paupers into the United States; also, what steps, if any, have been taken, to prevent the introduction of such paupers into the United States; provided such communication is not incompatible with the interests of the United States."

In reply to this request, President Van Buren forwarded a number of documents to Congress, from which the following extracts are taken.³⁴

From the consulate of the United States, Kingston, Jamaica, June 28, 1831: "I was called upon yesterday by most of the masters of American vessels now in this port, who complained of a law which obliges all foreign vessels under one hundred tons to take a pauper, or such other person that it may be desirable to get rid of, on board, and carry him or them off the island; and those above that size, one for every hundred tons burden at the rate of \$10 each. . . . I am informed that there are now about one hundred in the hospital at Kingston alone, and as there are scarcely any other foreigners trading to the colony but Americans, the greater part of those people will find their way to the United States in the manner already described."

From the consulate of the United States, District of

³⁴ Niles' Register, Vol. LV.

Kingston-upon-Hull-Teeds, August 30, 1836: "The officers of the customs are well aware that paupers do proceed both to the United States and Canada; and it has been admitted by the owners of several vessels sailing there, that their passengers are paid by the overseers of the parishes to which they belong. The mode of doing this varies according to the trustworthiness of the pauper."

Of special interest is the report from the consulate of the United States, Leipsic, March 8, 1837, signed by F. List.³⁵ "Not only paupers, but even criminals, are transported from the interior of the country to the sea-ports in order to be embarked there for the United States. A Mr. De Stein has lately made propositions to the smaller states of Saxony for transporting their criminals to the port of Bremen, and embarking them there for the United States at \$75 per head, which offer has been accepted by several of them. . . . It has of late, also, become a general practice in the towns and boroughs of Germany, to get rid of their paupers and vicious members, by collecting means for effectuating their passage to the United States among the inhabitants, and by supporting them from the public funds. This practice is highly injurious to the United States, as it burdens them with a host of paupers and criminals, and also deters the better and wealthier class of the inhabitants of this country from immigrating to the United States.

"To remedy the evil, I would propose the following measures. 1. That all persons intending to immigrate to the United States, would have to produce to the Consul of the United States, in the sea-port, a testimonial from the magistrate of their residence, purporting that they have not been punished for a crime (political punishments excepted) for the last three years; that they are able to maintain themselves by their labor or capital. 2. That the Consul of the United States, in the sea-port, should have to certify these testimonials; and that the masters of ships, who

³⁵ See House Report No. 1040, pp. 54-55; U. S. 25th Congress, 2nd Session. "Report from Select Committee on Foreign Paupers and Naturalization Laws, July 2, 1838."

would take a passenger without such a testimonial, should have to pay a considerable fine on landing him in the United States. 3. That the Consul of the United States, in the sea-port, should have power to refuse his certificate to all those immigrants who, in his opinion, would become a burden to the community on their arrival in the United States." These recommendations concerning over sea inspection have been of unusual importance in recent years, especially since the principles involved were incorporated in the Act of 1924 for the first time.

From the United States Consulate at Liverpool, September 15, 1836: "I find it has been the practice with many parishes, for some years past, to send abroad such of their superabundant population as would consent to go, and although there has never been a restriction as to the place, they have invariably preferred the United States, and ninety out of a hundred, New York."

From the United States Consulate at Dublin, September 1, 1836: "Our poor, in this country, are very poor indeed—so poor as to be altogether without the means of support, even for a few days. . . . It is by no means an uncommon occurrence for individuals possessed of large landed properties in this country to agree with the tenants to pay the expense of their passage to America."

Other consulate reports might be quoted and instances of this sort might be multiplied, but these will suffice to prove that the practice of transporting paupers and even criminals was a common one during this period. It did much to create that feeling of hostility to immigrants which manifested itself so strongly during and after the thirties.

No further action by Congress was had on the subject during the remainder of the session.³⁶ In fact, no further movement on the subject was made in Congress until the session of 1844-5, and then no definite action was had. During the session of 1844-5, Hamilton Fish of New York, again introduced the subject into the House of Represen-

³⁶ Congressional Globe of 1837-8, p. 489.

tatives, and a resolution was, on motion, adopted, directing the committee on the Judiciary to "report to the House whether any, and if any, what further legislation is necessary to prevent the introduction of foreign paupers or criminals." However, no report seems to have been made or further action had.³⁷ In the Senate, at the same session, Mr. Johnson of Louisiana offered a similar resolution, but it does not appear to have ever been considered or passed.³⁸

Consular reports on the importation of foreign paupers and criminals in 1845-46, in addition to a thorough investigation by the committee on the Judiciary in the Senate are additional proof that the practices had not then ceased of shipping paupers and criminals from European countries to the United States. Some of the testimony before the Senate committee³⁹ is indeed startling.

Testifying before this Senate Committee on the Judiciary March 3, 1845, Dr. S. B. Martin, health officer of Baltimore for fifteen years, stated how he had plead with the local authorities year after year to check in some way the great influx of paupers and convicts, in addition to "the halt, the lame and the blind."

Abraham Cuyk testified that he had been an agent for forwarding immigrants to the United States for four years. He stated that in November, 1843, the Bremen barque "Republic" arrived here with 28 convicts from the Kingdom of Wurtemberg. Moses Catzenstein, a passenger on the same boat, testified as follows: "Among the passengers were 28 criminals, sent out of the country by their respective governments, and accompanied by a police officer until the ship was fairly at sea, when each of the 28 persons were handed a certain sum of money by the police officer, and then he left the ship with the pilot, and the ship proceeded on her voyage. Nearly all the persons alluded to are now in Baltimore."

Many other witnesses testified before the Senate Com-

³⁷ Congressional Globe 1844-45, p. 209.

³⁸ *Ibid.*, p. 48.

³⁹ Senate Document 173, 28th Congress, Second Session.

mittee in like manner to their knowledge of foreign governments sending paupers and criminals to the United States. Some time after these disclosures, Hon. Geo. H. Goundie, American Consul at Basle, Switzerland, addressed a letter to the New York city authorities March 27, 1846,⁴⁰ in which he apprised them that the evil of sending paupers and criminals into this country was on the increase. Writing to the Collector of the Port of New York March 3, 1855, from the U. S. Consulate at Zurich, Switzerland, Hon. G. H. Goundie stated: "I have just been informed that the Commune of Niederwyl, Switzerland, have been forwarding 320 of their poorest people to the United States." The following letter from the State Department at Washington, Sept. 3, 1855, addressed to the Mayor of New Orleans, shows the means resorted to by those then engaged in transporting persons to the United States in order to avoid detection:

"Circulars issued by the immigration agents in the interior of Germany caution immigrants who are deformed, crippled, or maimed, etc., against taking passage to New York, and advise them to go by way of Baltimore, New Orleans, or Quebec, where the laws prohibiting the landing of immigrants of the above classes do not apply . . . W. Hunter, Assistant Secretary."

Just when the practice finally stopped it is difficult to say. Even as late as 1884-1885 thousands of immigrants were sent from Ireland to the United States and Canada partly at state expense and partly at the expense of the "Tuke Fund," some of whom were admittedly paupers.

While the dangers from pauperism and criminality were probably the leading causes of the intense hostility to immigration after 1830, yet broader and deeper objections were beginning to be felt and to be expressed in current writings. "In the North American Review for April, 1835, there is a very sane, calm and convincing article by Mr. A. H.

⁴⁰ See Senate Document No. 161, U. S. 29th Congress, 2nd Session. Also see House Doc. No. 54, U. S. 29th Congress, 2nd Session, for a report on the emigration of German paupers.

Everett, in which the disadvantages of immigration are set forth. Many of the stock arguments of today are well set forth here, among them, of course, the dangers from pauperism and crime, but also the dangers of a heterogeneous population, of poor assimilation, congestion in cities, misuse of political power, and the growth of foreign colonies. The author questions whether the immigrants are really filling the demand for labor, and urges the necessity of furnishing the immigrants with information about different sections of the country, and advising them about their destination. He also feels the need of much greater discrimination in the admission of aliens.”⁴¹

By 1840 we begin to hear arguments against immigration on the ground that the immigrants do more work for less money than the native workingmen, which indicates that the native workers were beginning to fear the economic competition of cheaper foreign labor. It is the foreshadowing of modern conditions and modern thought and marks the approaching end to the American frontier.⁴²

Another serious cause of hostility to immigration was religious in character, viz., a hatred and fear of the Roman Catholic religion, to which the great majority of the Irish adhered. It was at this period in our history that so many Irish Catholics were coming to our country. Dire prophecies as to the submerging of our institutions and the inevitable downfall of the Republic through Catholicism abounded in the newspapers. Throughout the sections of the country where the Irish settled, anti-Catholic riots were not infrequent, even necessitating at times the calling out of troops. Open hostility was displayed toward the Irish laborers on the canals and railroads in many parts of the country. Professor McMaster points out that at the spring elections of 1834 in New York City complaint was made on the part of the Whigs that gangs of Irishmen “armed with stones and bludgeons drove them from the polls, at-

⁴¹ Fairchild, *op. cit.*, p. 73.

⁴² Thus, by 1840 virtually every argument heard to-day against immigration was being used.

tacked their committee in its own room, put the Mayor, Sheriff, and posse to flight, and terrorized the city." ⁴³ It was necessary to call out the state militia in Boston in 1837 when a mob attacked and sacked the houses of the Irish. There were also anti-foreign riots of more or less serious proportions in Cincinnati, Philadelphia, Boston, New York, and other cities, most of which were directed against the Irish, although in Cincinnati the rioting was directed against the Germans. ⁴⁴

"These riots, the often reiterated statement that the immigrants were paupers and criminals, the antagonism of native workers in various lines of employment, the political attacks by foreign born upon the Government, the wide spread political organization of the foreigners and their conspicuous participation in city, state, and national elections, disputes over the use of the Bible in the public schools, the demands of the Irish Catholics that public support be given to their parochial schools—all these and other tendencies had given rise as early as the thirties to a public sentiment of antagonism towards the immigrant." ⁴⁵

Professor McMaster puts it thus: "Bringing with them all the prejudices of their native land, and while still in character and opinion what they were while a part of some European Society, they were in many states invested with the franchise, and the whole administration of government was subject to change by men just arrived from a land where they possessed no voice in the affairs of state. To such as thought on the matter of immigration, to such as considered the number and character of the newcomers, what they did and where they went after reaching our shores, the time seemed at hand for regulation or restriction." ⁴⁶

Due to this increasing and bitter hostility to immigration, immigration and its effects became an issue of the very first

⁴³ McMaster, *op. cit.*, Vol. VI, p. 227.

⁴⁴ The opposition to the Irish seems to have been greater than that toward the Germans and Scandinavians, for the Irish tended to settle in the cities, while the latter tended to move westward into the interior.

⁴⁵ Warne, *op. cit.*, pp. 238-9.

⁴⁶ McMaster, *op. cit.*, Vol. VI, p. 421.

importance and were the cause of one of the most remarkable political movements in American history, viz., the nativistic movement or "Native Americanism." The beginning of this movement is evident as early as 1835, in which year there was a Nativist candidate for Congress in New York City. In 1836 the party nominated a candidate for mayor of New York. Nativist societies were formed in Germantown, Pa., and in Washington, D. C., in 1837, and two years later the party was organized in Louisiana, where a state convention was held in 1841. The Native American Association of the United States, which was formed in Washington in 1837, sought among its objects to cherish native American sentiment, to exclude foreign opinions and doctrines "introduced by foreign paupers and European political adventurers," to exclude foreigners from office under the State and Federal Governments, and to procure a repeal of the naturalization law. The association planned the publication of a newspaper to espouse its objects. In 1835 the platform of the Native Americans in New York stated, "elevate no person of foreign birth to any office of honor, trust, or profit in the United States."

Numerous memorials poured into Congress, praying for legislation, so numerous were the evils resulting from the steadily increasing stream of immigration that was pouring into the United States.⁴⁷ The petitioners saw with great concern the influx of Roman Catholics. To such persons, as men, and to their religion as a religion, they had no objection. But against their political opinions, interwoven with their religious belief, they asked legislation for they felt that their union of church and state and their allegiance to the Pope required such action.

Immigration was a prominent issue in the presidential election of 1844 in which James K. Polk defeated Henry Clay. The bitter and unrelenting opposition to Henry Clay on account of Mr. Frelinghuysen, the candidate for Vice-President, who was a Protestant professor of Christianity and a well-known and active member of the American Bible

⁴⁷ Executive Document No. 70, 25th Congress, Second Session, Vol. II.

Society, did much to alarm the public at the foreign influence in our midst and it aroused indignation against those who controlled it.

An article in *Freeman's Journal*, probably written by Archbishop Hughes contained the following impudent threat: "Irishmen learn in America to bide their time. . . . At length the propitious time will come—some accidental, sudden collision, and a Presidential campaign at hand. We will use, then, the very profligacy of our politicians for our purposes. They will want to buy the Irish vote and we will tell them how they can buy it in a lump from Maine to California."

The charge was made by the foreign elements in *Brownson's Review* of July, 1844, that Mr. Frelinghuysen "concentrates in himself the whole spirit of 'Native Americanism and no Popery.'"

The *Boston Pilot* of October 31, 1844, a well known Roman Catholic organ of that day, contained the following advice to voters: "We recommend to you no party; we condemn no candidate but one, and he is Theodore Frelinghuysen."

The private correspondence of Mr. Clay shows that, in the opinion of himself and his leading friends, his defeat was owing to the foreign vote that was arrayed against them. In a letter, dated Buffalo, November 11, 1844, Mr. Fillmore wrote to Mr. Clay, "The Abolitionists and foreign Catholics have defeated us in this state. . . . Our opponents, by pointing to the Native Americans and to Mr. Frelinghuysen, drove the foreign Catholics from us."

In a letter dated Baltimore, November 28, 1844, Mr. John H. Westword wrote to Mr. Clay, "It was foreign influences, aided by the Irish and Dutch vote, that caused our defeat. As a proof, in my native city alone, in the short space of two months there were over 1,000 naturalized."

In a letter addressed to Mr. Clay, by Mr. Freylinghuysen, dated New York, November 9, we find the statement that, "More than 3,000 have been naturalized in this city alone

since the first of October. It is an alarming fact, that this foreign vote has decided the great questions of American policy, and contracted a nation's gratitude."

Several years before the organization of the American party, *The United States Magazine and Democratic Review* of July, 1850, held the following language—the argument of which is often heard at the present time, in favor of immigration restriction:

"These European reformers are flocking hither by thousands, bringing with them the pestilent products of the worn-out soil of the Old World—which, it would seem, whenever it falls into labor, produces nothing but monsters. They bring with them a host of extravagant notions of freedom, or a plenty of crude, undigested theories which are utterly irreconcilable with obedience to laws of our own making and from a constitution of our own adopting. They come with their heads full of a division of property. . . . The Socialists, who are come and coming among us, are silently making an impression on the people of our great cities, where all the sweepings of the country are gathered into one great mass of ignorance and corruption. They are instilling into them principles at war with Society . . ."

In the Pierce-Scott Presidential campaign of 1852 Scott was accused of "nativism" and this was a factor in his defeat. Rhodes, in his "*History of the United States*," states that "the large Irish and German immigration of the past few years have given the foreign vote an importance never before attached to it, and this is the first Presidential campaign in which we light upon those now familiar efforts to cajole the German and Irish citizens." The foreign vote in elections has ever since been an element of considerable importance. Hardly a campaign has passed without the public being greatly agitated because of the conspicuous presence at the polls of unnaturalized foreigners. It is certainly true that the foreign vote has at times virtually decided the great questions of American policy. That this foreign element is perhaps stronger than ever and has a powerful voice in party platforms and presidential elections

was evident in the political conventions, in the party planks and in the campaign speeches of 1924.

One feature of the election of 1852 was the prominence of a new political party which called itself the American party, but which is better known by the appellation of Know-nothings. It continued the opposition to immigration as manifested in the Native American Movement. Americans, and Americans only, should rule America, came to be its fundamental doctrine. Their cry now began to be Washington's famous order, "Put None but Americans on Guard Tonight." "The immediate and practical aim in view was that foreigners and Catholics should be excluded from all national, state, county, and municipal offices; that strenuous efforts should be made to change the naturalization laws so that the immigrant could not become a citizen until after a residence of twenty-one years in this country. No one can deny that ignorant foreign suffrage had grown to be an evil of immense proportion."⁴⁸

In 1854 this party carried the election in Massachusetts and Delaware and polled a great number of votes in New York. In 1855 it elected governors and legislatures in New York and four New England States, and in the South it was more or less successful in nine States. In 1856, it appeared as a full-fledged political organization and nominated Fillmore as a candidate for the Presidency. In 1856 eight of the thirty-two states had native American governors. In the Thirty-fifth Congress, in 1857, the party had five Senators and fourteen Representatives. In the Thirty-sixth Congress, it had two Senators and twenty-three Representatives, all from the South. But after the Thirty-sixth Congress it went to pieces rapidly and had no representation in any subsequent Congress.

However, the bitter hostility to immigration continued and the evils grew worse. The Molly Maguire disturbance in the anthracite region of Pennsylvania after 1850 created bitter hostility to immigration. In January, 1855, the problem was so serious in New York City that Mayor Wood

⁴⁸ Rhodes, *History of the Uni'ed States*, Vol. II, p. 512.

addressed a letter to the President, in which he asked the interference of the general government to protect our country against these foreign aggressions. Mayor Wood also addressed our ministers, consuls, and other representatives in Europe, invoking their aid and coöperation to put an end to the evil. About the same time resolutions of inquiry on the subject, especially concerning paupers and convicts, were introduced in the Senate by Senator Cooper of Pennsylvania. So emboldened had some of the foreign powers become in making our country the receptacle for the dregs and off-scourings of their population, and thus relieving themselves of the burden of pauperism and crime, that some of them had the audacity to deny our right to prevent them from doing so.⁴⁹

One of the governments doing so was Wurtemberg, which in 1855 impudently denied our right to return paupers and criminals and passed public resolutions of protest, which have had a familiar echo in the recent protests of several nations against the Act of 1924. These resolutions read in part: "Whereas, It is desirable that those who have once emigrated to America, and especially those who have been transported thither at the expense of the State, or the communes, and are unable, whether or not it be from any fault of their own, to earn their subsistence, should not return here, to be a burden to the State or the commune, which in that case will have defrayed the expense of their journey in vain: and

"Whereas, The American authorities are scarcely authorized to send back those who, having once been admitted to the country, cannot earn their subsistence in America, . . . therefore,

"Resolved, That necessary steps are to be taken to prevent their transportation back to this country."

The Wurtemberg denial of our rights to protect ourselves against their criminals and paupers, was, in itself

⁴⁹ Report of the Committee on Foreign Affairs of the House of Representatives on "*Foreign Criminals and Paupers*," August 16, 1856. U. S. 34th Congress, 1st Session, House Doc. No. 359.

recognized at that time by the House Committee, as strong evidence of the necessity which existed for doing so.

That thoughtful persons were then studying the problems resulting from immigration and were urging action to restrict the tide is evident from what has been written. However, the following facts set forth in a startling manner how carefully they were investigating the problems resulting especially from the immigration of paupers and criminals. The methods used in collecting and setting forth their facts seem to be similar, if not identical, in many cases with the methods used in the investigations of recent years, as noted below.

"Whatever the causes which have of late years produced this immense immigration into this country,⁵⁰ it is certainly an undeniable fact that the 'palpable and admitted growing influence of the foreign born population of the United States has, for several years past, been a source of anxiety and dissatisfaction to a considerable number of our native citizens.' This is so apparent that a writer on the subject of immigration, styling himself a foreigner, frankly admits it and says: 'The Kensington riots, the Southwark disturbances, and the present position of civil, political, and religious feeling, confirm the fact, and render it an important and interesting subject, worthy of the attention and candid consideration of us all.'"⁵¹

The same author (J. P. Sanderson), writing on the pecuniary advantage of immigration, set forth an argument used frequently at the present time against immigration. "It would be probably a much safer and more accurate calculation, to assume that the average amount of property brought by each immigrant during the last ten years was \$15.⁵² Bishop Hughes himself claims no larger amount; for but a short time since he averred in the Free-

⁵⁰ In a table the author (J. P. Sanderson), states that in 1850 the total of all of our population, exclusive of Anglo-Saxon blood was 8,263,498; the total population of the United States in 1850 being 23,263,488.

⁵¹ Sanderson, J. P., *Republican Landmarks*, p. 19 (1856).

⁵² A statement in *Jahrbücher* in 1851 claimed the average amount of property brought by each German immigrant to have been between \$64 and \$65. The Irish were said to average \$30 each.

man's Journal that to be the sum. Taking that, then, as the amount, what is the aggregate sum that has been brought into the country by them from the beginning of 1850 to the close of 1854? During that period 1,983,882 persons are reported by the State Department at Washington to have arrived, which at the rate of \$15 per head, would make the sum of \$29,758,220. Now let us take an account of the other side of the question and strike a balance sheet. By the general report of the British Immigration Commissioners, made on the first of May last, the amounts remitted from this country to Ireland alone during the same period were as follows: in 1850, £957,000; in '51, £990,000; in '52, £1,404,000; in '53, £1,439,000; and in '54, £1,730,000—which when converted into our currency sums up to \$28,948,800. We have thus a balance left in favor of this country of less than \$1,000,000, without taking into account the amounts sent to Ireland through private sources, which cannot be ascertained, and without counting a dollar of the large amount remitted by the Germans and immigrants from other countries for like purposes. It is clear, therefore, that immigrants do not, by the property they bring with them, add to our national wealth, but that, on the contrary, they contribute to swell the coffers of the countries of their birth, by remitting a larger amount of money than they bring with them.⁵³

"But we are not yet done with the reckoning. The case has not been much more than half stated. . . . Having contributed nothing to the aggregate wealth of the country, what claim then have they to its charitable consideration? And yet, whose means but the natives of this country and those now identified with them, feeds their paupers and educates their children? And how much of the public expenses is incurred by the crimes committed by the vicious portions of them, which has to be borne also by those

⁵³ It is interesting to note in this connection that several of the European countries stated in 1924, if the United States put into force drastic immigration restrictions, that they would not be able to meet their war debt obligations, since the flow of money from immigrants in the United States would be lessened seriously.

among whom they have sought a home? These are questions to be taken into consideration before the balance sheet can be properly closed, and when they are, they will be found to put at rest the claim now preferred in favor of immigration.”⁵⁴

The census returns of 1850 stated that the amount of the public means expended in the year preceding 1850, for the support of paupers, was \$2,954,806; the number of paupers supported within the same year, in whole or in part, was 134,972, of which over one-half were foreigners, there being 66,434 native born and 68,538 of foreign birth. Of the foreign born population⁵⁵ in the United States at that time, one of at least every thirty-three was a pauper, supported at public expense, while of the native born,⁵⁶ only one of every three hundred was thus a charge on the public.

From other sources than the census returns of 1850, such as the Prison Discipline Journal, American Register, American Almanac, etc., additional information can be secured to set forth the reasons for the then existing and developing opposition to immigration in the United States, especially against the pauper classes.

In Massachusetts, there were relieved and maintained at the public expense, from 1837 to 1840, the aggregate number of 8,671 persons, of whom 6,104 were foreigners, being over two-thirds of the number; for the years 1850-1853, the whole number amounted to 107,776, of which 48,469 were foreigners. Of these over 40,000 were from England and Ireland. The number received into the Baltimore almshouse during the year 1851 was 2,150, “of which number about 900 were Irish and German,” and of 2,350 admitted to the same institution in 1854, there were 1,397 foreigners, of whom 641 were Germans and 593 Irish.

The Society for the relief of the poor in Philadelphia reported that for the year ending March 31, 1855, there were received into their Home 1,266 persons, of whom

⁵⁴ Sanderson, J. P., *Republican Landmarks*, pp. 25-26. For a criticism of this argument based on such calculations, see Kapp, F., *Immigration*, Ch. VIII, on “The Capital Value of Immigration to This Country” (1870).

⁵⁵ Viz., 2,244,625,

⁵⁶ Viz., 19,979,563.

there were 816 foreigners; 605 of whom were Irish. The number of paupers received into the Blockley (Philadelphia) Almshouse in 1848 was 3,584, of whom 2,345 were foreigners; there being among them 1,650 Irish, 435 Germans and 227 English. On March 1, 1855, the census of the inmates of Blockley Almshouse showed that there were 558 natives and 1,571 foreign whites therein.

Over the 12-year period 1842-1854, the aggregate number of persons received into the Pennsylvania Hospital at Philadelphia was 17,834, of whom 10,543 were foreigners; of the foreigners more than two-thirds were from Ireland.

At the Charity Hospital in New Orleans the number of admissions in 1848 was 11,945 of whom 10,280 were foreigners. In 1853 the numbers were 13,750 admitted, of whom 12,333 were foreigners.

Many similar statistics might be adduced, all showing the same state of things in different sections of the country at that time—all setting forth the reasons for the developing opposition to at least certain types or classes of immigrants.⁵⁷

The following extract from a letter of Jeremiah Clemens, at that time United States Senator from Alabama, is of great interest and value, for in his investigations he seems to have used the same methods employed by Dr. H. H. Laughlin in his institutional survey, reported to the House Committee, November 21, 1922.⁵⁸

"By reference to the annual report of the Governor of the Alms-House, I find there were in the New York Alms-House, during the year 1853, 2,198 inmates—of these only 535 were natives, and 1,663 foreigners, supported at the expense of the city. And now I propose to use on our side the argument of our opponents, that there are only 3,000,000 foreigners to 20,000,000 natives. According to that ratio there ought to be about seven natives to one for-

⁵⁷ Similar facts have been set forth in recent years to prove the necessity for restriction of immigration.

⁵⁸ Dr. H. H. Laughlin's report is explained in full in the chapter, "Back to 1890."

eigner in the Alms-House; whereas we find more than three foreigners to one native.⁵⁹ No wonder that a people who are taxed to support such a body of paupers should be the first to set about devising means to get rid of them. In the Bellevue Hospital, in the same city, there were 702 Americans—4,134 foreigners; now the proportion rises to nearly six to one. There were the outdoor poor—957 native adults and 1,044 children—3,131 foreign adults and 5,229 foreign children. In the city prisons there were during the year 6,102 Americans—22,229 foreigners. In the Lunatic Asylum there were admitted from the year 1847 to 1853, 779 Americans—2,381 foreigners. . . . These figures are far more conclusive than any language could be to prove the necessity of arresting the tide of immigration. Let every American impress them deeply upon his memory: 42,369 foreign paupers and invalids; 2,381 lunatics, and 22,229 criminals, taxing the industry and blighting the prosperity of a single city. In that list of crimes is embraced murder, rape, arson, robbery, perjury, everything which is damning to the character of the individual, and everything which is dangerous to society.”

Advocates of immigration restriction in the fifties set forth figures concerning crime to prove the necessity for a check on immigration. According to De Bow's Census Compendium the whole number of criminals convicted in the year 1848, not including California, was 26,679, of which number 12,988 were natives and 13,691 were foreigners, being one conviction out of every 1580 of the native and one out of about every 165 of the foreign population in the United States at that time.

Of those convicted 10,279 were in New York, of whom 6,317 were foreigners. In Massachusetts those convicted numbered 7,250 of whom there were 259 more than one-half foreigners. In all the New England states more than one-half of those convicted were foreigners.

In a speech advocating immigration restriction, which

⁵⁹ It would seem that this is virtually the same basic plan used by Dr. H. H. Laughlin in his report to the House Committee, November 21, 1922.

he delivered in the United States Senate January 25, 1855, Hon. James Cooper of Pennsylvania stated that in the conviction for capital offenses the proportion of foreign to native born was startling, and that out of 220 convictions which took place in about eighteen months in the seven states of New York, Pennsylvania, Missouri, Louisiana, New Jersey, Massachusetts, and Maryland, there were 138 of foreigners to 82 of natives.⁶⁰

Virtually all of this agitation and opposition, however, proved to be futile in the direction of restricting the volume of immigration for the great, almost limitless West was still to be settled. While a few states passed more laws after 1840, yet these accomplished little for they were easily evaded. The problem was no longer one which could be solved by state action. Formerly this had been sufficient but it was no longer able to stem the tide. Just as the trust problem in the United States grew too large for state control and demanded federal legislation; just as the railroad problem outgrew the capacity of the states to deal with it successfully and forced Congress to legislate; just so did immigration become after 1830 so big and vital a problem that it demanded legislation from Congress. However, "it must not be forgotten that at the time opposition to immigration was becoming strongest there was an even more important subject engrossing the attention of the people and one which then loomed much more threateningly on the political horizon, a subject of internal difference that was dividing the American people much more fundamentally, a subject that was to plunge them into bloody fratricidal strife. In the throes of it the evils of immigration were lost sight of."⁶¹ State rights was the issue through all these years, so that during all this period of agitation prior to the War Between the States, opposition to immigration was not sufficiently strong to place any restrictive legislation on the Federal Statute books.

⁶⁰ For many additional facts see Busey, S. C., *Immigration, Its Evils and Consequences* (1856), and Sanderson, J. P., *Republican Landmarks* (1856).

⁶¹ Warne, *op. cit.*, p. 245.

As a result immigration was left almost entirely by the Federal Government in the hands of the separate states to be dealt with under their police powers as they thought best for their own safety and welfare. In the next chapter we shall study the problem as to who has the authority over immigration in the United States. However, the important thing to note here is that federal legislation on the subject was not fundamentally necessary before the thirties and that, though necessary after then, it was impossible to secure it, not because the people were not opposed to immigration,⁶² but because the question of state rights had to be settled first. Congress had asserted its power in the Alien and Sedition Acts of 1798 to keep out or prohibit the importation of aliens. Its constitutionality was denied by several States. What was the power of the Federal Government and what were the powers of the State Governments on the subject? Into a study of this problem, let us now enter.

⁶² The War Between the States, following the industrial panic of 1857, naturally checked the tide of immigration and, for about a decade, the excessive fear of immigration was lessened. The liberal homestead act of 1862 was also partly responsible for this change of attitude toward the alien elements.

CHAPTER III

POWER OF CONGRESS OVER IMMIGRATION *

CONGRESSIONAL authority under Article I, Section 9, of the Constitution—Cases—The internal police power of the states—Cases—Congressional authority over immigration under the power to regulate commerce—Cases—Conclusions.

How far Congress had the power under the ninth section of the first Article of the Constitution of the United States to regulate, restrain or prohibit the immigration of foreigners, or whether it had any power over the subject, was a disputed question for many years. The ninth section of the first article provides that: "the migration or importation of such persons as any of the States, now existing, shall think proper to admit, shall not be prohibited by Congress prior to the year 1808, but a tax may be imposed on such importation, not exceeding ten dollars for each person." This was undoubtedly understood by the framers of the constitution to apply altogether to slaves and it was so construed in the *Federalist*, the forty-second number of which, written by Mr. Madison, contains the following in relation to it:

"It were doubtless to be wished that the power of prohibiting the importation of slaves had not been postponed until the year 1808. . . . It ought to be considered as a point gained in favor of humanity, that a period of twenty years may terminate forever, within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy. . . . Attempts have been made to pervert this clause into an objection against the constitution, by representing it on one side as a criminal toleration of an illicit practice, and on another as calculated to prevent

* For early studies on this topic see Sanderson, J. P., *op. cit.*, Ch. XI; Busey, *op. cit.*, Ch. XIII; and Kapp, *op. cit.*, Ch. VIII-IX.

voluntary and beneficial immigration from Europe to America. I mention these misconstructions not with the view to give them an answer—for they deserve none—but as specimens of the manner and spirit in which some have thought fit to conduct their opposition to the proposed government.”

The language used in the constitution, however, seems to be such as may well justify the question, raised by many persons at that time, whether it could not have been applied clearly and fairly to the importation of foreign convicts and paupers, and there were many who contended that it applied to all immigrants, conferring upon Congress the power to prohibit the admission of *all* “such persons,” and necessarily including the power to admit them on such conditions as it might have thought proper to impose, which would, of course, have carried with it the right of taxing them. It was certainly deemed broad enough at the time of the adoption of the constitution, notwithstanding the cavalier manner in which Mr. Madison dismissed the objections urged against it, to cover immigrants generally, while some supposed it might cover convicts.¹

Luther Martin, in his celebrated letter to the Maryland Legislature, explanatory of the course pursued by him in the convention which framed the constitution, alludes to this provision as follows:

“The design of this clause is to prevent the General Government from prohibiting the importation of slaves; but the same reasons which caused them to strike out the word ‘national,’ and not admit the word ‘stamps’ influenced them here to guard against the word ‘slaves.’ They anxiously sought to avoid the admission of expressions which might be odious in the ears of Americans, although they were willing to admit into their system those things which the expression signified; and hence it is that the clause is so worded as really to authorize the General Government to impose a duty of ten dollars on every foreigner who comes into a State to become a citizen, whether he comes

¹ *Madison State Papers*, Vol. III, pp. 1429-30.

absolutely free, or qualified so as a servant; although this is contrary to the design of the framers, and the duty was only meant to extend to the importation of slaves.”²

James Wilson, who was himself a leading and influential member of the Convention which framed the constitution, and also the prominent champion of it in the Pennsylvania Convention, which was convened to ratify or reject it, referred in a speech, in the last named body to this particular provision, as follows:

“A little impartiality and attention will discover the care that the Convention took in selecting their language. The words are—‘the migration or importation of such persons, etc., shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed on such importation.’ It is observable here that the term migration is dropped, when a tax or duty is mentioned, so that Congress have power to impose the tax only on those imported.”³

In the North Carolina Convention Mr. Galloway made the objection that he did “not wish to see the tax on the importation extended to all persons whatsoever,” and gave as his reasons therefor, that the situation of the South was different from the North, saying, “we want citizens, they do not.” Mr. Iredell, afterwards one of the judges of the Supreme Court of the United States, replied to these remarks, as follows:

“The worthy gentleman has I believe misunderstood this clause. . . . The committee will observe the distinction between the two words migration and importation. The first part of the clause will extend to persons who come into this country as free people, or as slaves bought. But the last part extends towards slaves only. The word migration refers to free persons; but the word importation refers to slaves because free people cannot be said to be imported. The tax, therefore, is only to be laid on slaves who are imported, and not on free persons who migrate.”⁴

From these statements it would seem that both Justices

² Elliot's *Debates*, Vol. I, p. 372.

³ Elliot's *Debates*, Vol. II, p. 453.

⁴ Elliot's *Debates*, Vol. IV, p. 101.

Wilson and Iredell seem to concede the power to Congress under this provision of the constitution to prohibit, after 1808, the migration of foreigners as well as the importation of slaves, and only contended that the right of taxation was confined by Congress to the importation of slaves. Others admitted that such was the intention of the framers of the constitution, but contended that it conferred the power to tax voluntary immigrants as well as slaves. According to the views of these gentlemen, the General Government had the power, under this section of the constitution, over the subject of immigration as well as the importation of slaves. This view seems to have been sustained by various judicial opinions.

Chief Justice Marshall, in delivering the opinion of the Supreme Court of the United States, in the case of *Gibbons v. Ogden*,⁵ in which case the Court decided that the power to regulate commerce, so far as it extends, is exclusively vested in Congress, and that no part of it can be exercised by a State in violation of any law of Congress, used the following language in relation to the ninth section of the first article of the constitution:

"The section which restrains Congress from prohibiting the migration or importation of such persons as any of the States may think proper to admit until 1808, has always been considered as an exception from the power to regulate commerce; and certainly seems to class migration with importation. Migration applies as appropriately to voluntary, as importation does to involuntary, arrivals; and, so far as an exception from a power proves its existence, this section proves that the power to regulate commerce applies equally to the regulation of vessels employed in transporting men, who pass from place to place voluntarily, and to those who pass involuntarily."

In the same case, Justice Johnson, who concurred in the decision of the Court but delivered a separate opinion, gave his views on this point as follows:

"Commerce, in its simplest signification, means an ex-

⁵ 9 Wheaton Rep. 216 (1824).

change of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation. . . . That such was the understanding of the framers of the constitution, is conspicuous from provisions contained in that instrument. The first clause of the ninth section, not only considers the right of controlling personal ingress or migration, as implied in the powers previously vested in Congress over commerce, but acknowledge it as a subject of revenue. And, although the leading object of this section undoubtedly was the importation of slaves, yet the words are obviously calculated to comprise persons of all descriptions, and to recognize in Congress a power to prohibit, when the States permit, although they cannot permit when the States prohibit."

In the cases of *Smith v. Turner* and *Norris v. City of Boston*,⁶ in which the constitutionality of the passenger laws of New York and Massachusetts came under consideration and were declared void, Justice McKinley delivered the following opinion, which seems to accord with those of Chief Justice Marshall and Justice Johnson:

"I have never heard a full and satisfactory argument on the first clause of the ninth section of the first article of the Constitution. Yet, on full examination of the clause, connected with other provisions of the constitution, it has had a controlling influence on my mind in the determination of the case before us. Some of my brethren have insisted that the clause here quoted applies exclusively to the importation of slaves. If the phrase 'the migration or importation of such persons' was intended by the convention to mean slaves only, why, in the assertion of the taxing power, did they, in the same clause, separate migration from importation, and use the following language?—'But a tax or duty may be imposed on such persons, not exceeding ten dollars for each person.' All will admit that

⁶7 Howard 283 (1848).

if the word migration were excluded from the clause, it would apply to slaves only. An unsuccessful attempt was made in the convention to amend this clause by striking out the word migration, and thereby to make it apply to slaves exclusively. . . . The conclusion, to my mind, is therefore irresistible, that there are two separate and distinct classes of persons intended to be provided for by this clause. Although they are both subjects of commerce, the latter class only is the subject of trade and importation. The slaves are not immigrants. . . . Having thus shown there are two distinct classes included in, and provided by, the clause of the constitution referred to, the question arises, how far the persons of the first class are protected by the constitution and laws of the United States from the operation of the statute of New York now under consideration? The power was conferred on Congress to prohibit migration or importation of such persons into all the new States, from and after the time of their admission into the Union, because the exemption from the prohibition of Congress was confined exclusively to the States then existing, and left the power to operate upon all the new States admitted into the Union prior to 1808. Four new States having been thus admitted within that time, it follows, beyond controversy, the power of Congress over the whole subject of migration and importation was complete throughout the United States after 1808.

“The power to prohibit the admission of ‘all such persons,’ includes, necessarily, the power to admit them on such conditions as Congress may think proper to impose; and, therefore, as a condition, Congress has the unlimited power of taxing them. If this reasoning be correct, the whole power over the subject belongs exclusively to Congress, and connects itself indissolubly with the power to regulate commerce with foreign nations. . . . The great question here is, Where does the power of the United States over this subject end, and where does the State power begin? This is, perhaps, one of the most perplexing questions ever submitted to the consideration of this court.”

Justice Wayne concurred with Justice McKinley in his interpretation of the ninth section of the first article of the constitution. He stated that it "includes within it the migration of other persons, as well as the importation of slaves, and in terms recognizes that other persons as well as slaves may be the subjects of importation and commerce." He doubtless had in view the transportation of convicts and paupers to the United States at the expense of European governments. Justice Catron also concurred in the opinion delivered by Justice McKinley and adopted it as forming part of his own.

Chief Justice Taney could not, however, assent to the opinion expressed by Justice McKinley, and Justices Daniel, Nelson and Woodbury concurred with him in dissenting. The Chief Justice said:

"If the word can be applied to voluntary immigrants, the construction put upon it by those who opposed the constitution is certainly the just one; for it is difficult to imagine why a power should be so explicitly and carefully conferred on Congress to prohibit immigration, unless the majority of the States desired to put an end to it, and to prevent any particular State from contravening this policy. But it is admitted on all hands, that it was then the policy of all States to encourage immigration. . . . It is only upon the ground that they considered it an evil, and desired to prevent it, that this word can be construed to mean freedom, and to class them in the same provision and in the same words, with the importation of slaves. The limitation of the prohibition also shows that it does not apply to voluntary immigrants. Congress could not prohibit the migration and importation of such persons during the time specified 'in such States as might think proper to admit them.' This provision clearly implies that there was a well known difference of policy among the States upon the subject to which this article relates. Now, in regard to voluntary immigrants, all the States, without exception, not only admitted them, but encouraged them to come; and the words 'in such States as may think proper to admit

them,' would have been useless, and out of place, if applied to voluntary immigrants. But in relation to slaves it was known to be otherwise. . . . The qualification of the power of prohibition, therefore, by the words above mentioned, was entirely appropriate to the importation of slaves, but inappropriate and useless in relation to freedom. . . . The whole context of the sentence, and its provisions and limitations, and the construction given to it by those who assisted in framing the clause in question, show that it was intended to embrace those persons only who were brought in as property."

Justice Woodbury, in noticing this section, in delivering his opinion in the same cases, said:

"This they consider as a grant of power to Congress to prohibit the immigration from abroad of all persons, bond or free, after 1808, and to tax their importation at once and forever, not exceeding ten dollars per head. (9 Wheaton, 230; Justice Johnson: 15 Peters, 514). . . . But it deserves special notice, that this ninth section is one entirely of limitation of power rather than a grant of it; and the power of prohibition being nowhere else in the constitution expressly granted to Congress, the section seems introduced rather to prevent it from being implied, except as to slaves, after 1808, than to confer it in all cases. (1 Brockenbrough, 434). If to be implied elsewhere, it is from the grant to regulate commerce, and by the idea that slaves are subjects of commerce, as they often are. Hence it can go no further than imply it as to them, and not as to free passengers. Or if to 'regulate commerce' extends also to the regulation of mere navigation, and hence to the business of carrying passengers, in which it may be employed, it is confined to a forfeiture of the vessel, and does not legitimately involve a prohibition of persons, except when articles of commerce, like slaves. (1 Brockenbrough, 432). Or finally, however, it is still a power concurrent in the States, like most taxation, and is well exercised by them when Congress does not, as here, legislate on the matter either of prohibition or of taxation of pas-

sengers. It is hence, that if this 9th section was a grant to prevent the migration or importation of other persons than slaves, it is not an exclusive one, any more than that to regulate commerce, to which it refers: nor has it even here been exercised so as to conflict with State Laws or with the statute of Massachusetts, now under consideration. This clause itself recognizes an exclusive power of prohibition in the States, until 1808. And a concurrent and subordinate power on this by the States, after that, is nowhere expressly forbidden in the constitution, nor is it denied by any reason or necessity for such exclusiveness. The States can often use it more wisely than Congress, in respect to their own interests and policy. . . . The word 'migration' was probably added to 'importation,' to cover slaves when regarded as persons rather than property, as they are for some purposes. Or if to cover others, such as convicts and redemptioners, it was those only who came here against their will or in a quasi servitude."

Justice Daniel expressed himself as follows: "This ninth section of the first article of the constitution has been invoked in support of the power claimed for the Federal Government. . . . The assertion for a general necessity for permission to the States from the General Government, either to expel from their confines those who are mischievous or dangerous, or to admit to hospitality and settlement whomsoever they may deem it advantageous to receive, carries with it either a denial to the former, as perfect original sovereignties, of the right of self-preservation, or presumes a concession to the latter, the creature of the States, wholly incompatible with its exercise. This authority over alien friends belongs not, then, to the General Government, by any express delegation of power, nor by necessary or improper implication from express grants."

From a review of the opinions given, the weight of authority seems to be that the section of the constitution in question was an exception to the power of Congress to regulate commerce, so that if it had not been introduced, the power to prohibit the importation would have resulted

from the general grant to regulate commerce.⁷ For it is a rule of interpretation acknowledged by all, that the exception of a particular thing from general words proves that, in the opinion of the lawgiver, the thing excepted would be within the general clause, had the exception not been made, and there seems to be no reason why this general rule should not be as applicable to the constitution as to other instruments.⁸ The section, according to this construction, not only considers the right of controlling personal ingress or migration, as implied in the powers previously vested in Congress over commerce, but acknowledges it as a subject of revenue.⁹ Congress having the exclusive power to regulate commerce, and the latter, under the interpretation of the ninth section including the immigration of persons as well as the importation of merchandise, the conclusion was beginning to be irresistible by 1850 that Congress had the *sole* power over the immigration of foreigners as well as the importation of goods, and that the States could not, therefore, tax immigrants for the purpose of paying expenses incident to the execution of their police laws.

Though a great difference of opinion is manifested in the written opinions of the Judges of the Supreme Court, as to the constitutionality of the passenger laws of New York and Massachusetts, which imposed a tax, and which were under consideration in the cases of *Smith v. Turner* and *Norris v. Boston*, no such differences existed among them as to the power relating to internal police being reserved to the States, to be exercised by them even to the entire exclusion of certain classes of persons. This principle was fully established in the case of the *City of New York v. Milne*,¹⁰ which came before the United States Supreme Court, on a certificate of division in opinion of the Judges of the Circuit Court of the United States for the Southern District of New York. The facts of the case were these: By one of the provisions of an act passed by the New York

⁷ 15 Peters' Rep., 514.

⁸ 12 Wheaton Rep., 440.

⁹ 12 Wheaton, 450.

¹⁰ 11 Peters' Rep., 102 (January, 1837).

Legislature in 1824, the master of every vessel arriving in New York was required under certain penalties, within twenty-four hours after his arrival, to make report of the names, ages and last legal settlement of every person on board his vessel, etc. New York City brought an action of debt under this law against the master of the ship "Emily", for the recovery of certain penalties imposed by the act. The defendant demurred and alleged that the act assumed to regulate trade and commerce, and was therefore unconstitutional. The Supreme Court decided otherwise, however, and pronounced the act to be constitutional. In delivering the opinion of the court, Justice Barbour said:

"We are of opinion that the act is not a regulation of commerce but of police; and that being thus considered, it was passed in the exercise of a power which rightfully belonged to the States. . . . The power of New York to pass this law having undeniably existed at the formation of the constitution, the simple inquiry is, whether by that instrument it was taken from the States, and granted, to Congress; for if it were not, it yet remains with them. If, as we think, it be a regulation, not of commerce, but police; then it is not taken from the States. To decide this, let us examine its purpose, the end to be attained, and the means of its attainment.

"The object of the legislature was, to prevent New York from being burdened by an influx of persons brought thither in ships, either from foreign countries, or from any other of the States, and for that purpose a report was required of the names, places of birth, etc., of all passengers, that the necessary steps might be taken by the city authorities to prevent them from becoming chargeable as paupers. . . . Now we hold that both the end and the means here used, are within the competency of the States, since a portion of their powers were surrendered to the Federal Government. Let us see what powers are left with the States. . . . This court, in the case of *Gibbons v. Ogden*,¹¹ in speaking of the inspection laws of the State, says: 'They form a

¹¹ 9 Wheat., 203 (1824).

portion of that immense mass of legislation which embraces everything within the territory of a State, not surrendered to the General Government, all which can be most advantageously exercised by the States themselves.' . . .

"Now, if the act in question be tried by reference to the delineation of power laid down in the preceding quotation, it seems to us that we are necessarily brought to the conclusion, that it falls within its limits. . . . We choose rather to plant ourselves on what we consider impregnable positions. They are these: That a State has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the constitution of the United States; that, by virtue of this, it is not only the right but the bounden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated; that all those powers which may be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these the authority of a State is complete, unqualified, and exclusive. We are aware, that it is at all times difficult to define any subject with proper precision and accuracy; if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one which we are now considering. . . .

"Now in relation to the section in the act immediately before us, that is obviously passed with a view to prevent her citizens from being oppressed by the support of multitudes of poor persons, who come from foreign countries without possessing the means of supporting themselves. There can be no mode in which the power to regulate internal police could be more appropriately exercised. New York, from her particular situation, is, perhaps more than any other city in the Union, exposed to the evil of thou-

sands of foreign immigrants arriving there, and the consequent danger of her citizens being subjected to heavy charge in the maintenance of those who are poor. It is the duty of the State to protect its citizens from this evil; they have endeavored to do so, by passing, amongst other things, the section of the law in question. We should, upon principle, say that it had a right to do so. . . .

"We think it as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease."

In the same case Justice Thompson said: "Can anything fall more directly within the police power and internal regulation of a State, than that which concerns the care and management of paupers or convicts or any other class or description of persons that may be thrown into the country, and likely to endanger its safety, or become chargeable for their maintenance? It is not intended by this remark to cast any reproach upon foreigners who may arrive in this country. But if all power to guard against these mischiefs is taken away, the safety and welfare of the community may be very much endangered."

In the case of *Groves et al v. Slaughter*,¹² Chief Justice Taney, in noticing the question of constitutional law that had been brought into discussion, viz., whether the grant of power to the General Government to regulate commerce does not carry with it an implied prohibition to the States to make any regulations upon the subject, even though they should be altogether consistent with those made by Congress, raised the query whether such State legislation would not be valid until Congress should otherwise direct. He said: "The question upon which different opinions have been entertained, is this: Would a regulation of commerce, by a State, be valid until Congress should otherwise direct,

¹² 15 Peters' Rep., 509.

provided such regulation was consistent with the regulations of Congress, and did not in any manner conflict with them? No case has yet arisen which made it necessary, in the judgment of the court, to decide the question. It was treated as an open one, in the case of *The City of New York v. Milne*,¹³ decided at January term, 1837, as will appear by the opinions then delivered; and since that time the point has never, in any form, come before the court."

Justice Baldwin, in the same case, (*Groves et al v. Slaughter*, 15 Peters' Rep. 509) however, emphatically recognized the exclusive power of Congress over commerce, yet at the same time conceded the internal police power to belong exclusively to the States. He stated: "That the power of Congress 'to regulate commerce among the several States' is exclusive of any interference by the States, has been, in my opinion, conclusively settled by the solemn opinions of this court, in *Gibbons v. Ogden*,¹⁴ and in *Brown v. Maryland*.¹⁵ . . . Cases may, indeed, arise wherein there may be found the difficulty in discriminating between regulations of 'commerce among the several States,' and the regulations of 'the internal police of a State,' but the subject-matter of such regulations, of either description, will lead to the true line which separates them, when they are examined with a disposition to avoid a collision between the powers granted to the Federal Government, by the people of the several States, and those which they have reserved exclusively to themselves."

In the case of *Prigg v. the Commonwealth of Pennsylvania*,¹⁶ Justice Story, in delivering the opinion of the Court, used the following language in relation to the police power belonging to the States: "The police power extends over all subjects within the territorial limits of the States, and has never been conceded to the United States. . . . We entertain no doubts whatsoever, that the States, in virtue of their general police power, possess full jurisdic-

¹³ 11 Peters, 102.

¹⁵ 12 Wheat., 438-446.

¹⁴ 9 Wheat., 186-192.

¹⁶ 16 Peters' Rep., 625.

tion to arrest and restrain runaway slaves and remove them from their borders, and otherwise to secure themselves against their depredations and evil example, as certainly they may do in cases of idlers, vagabonds, and paupers."

In the License cases,¹⁷ Chief Justice Taney still insisted that there was no absolute prohibition to the exercise of the power over commerce by the States, in which opinion Justice Woodbury concurred. However, Justice McLean did not agree with them as to the power of the States over commerce but he distinctly recognized the internal police power of the States. He stated: "In all matters of government, and especially of police, a wide discretion is necessary. It is not susceptible of an exact limitation, but must be exercised under the changing exigencies of society. . . . Under the pretense of a police regulation, a State cannot counteract the commercial power of Congress. . . . The police power of a State and the foreign commercial power of Congress must stand together. Neither of them can be so exercised as materially to affect the other. The sources and objects of these powers are exclusive, distinct and independent, and are essential to both governments."

Justice Grier, in the same case said: "Without attempting to define what are the peculiar subjects or limits of the police power, it may safely be affirmed that every law for the restraint and punishment of crime, for the preservation of the public peace, health, and morals, must come within this category. . . . It is for this reason that quarantine laws, which protect the public health, compel mere commercial regulations to submit to their control. They restrain the liberty of the passengers, they operate on the ship which is the instrument of commerce, and its officers and crew, the agents of navigation. . . . Paupers and convicts are refused admission into the country. All these things are done, not from any power which the States assume to regulate commerce or to interfere with the regulations of Congress, but because police laws for the preserva-

¹⁷ 5 Howard, 578.

tion of health, prevention of crime, and protection of the public welfare, must of necessity have full and free operation, according to the exigency which requires their interference."

The immediate question at issue in the case of *Smith v. Turner and Norris v. City of Boston*¹⁸ was not, however, made dependent upon the construction of the ninth section of the first article of the constitution, but was, whether the enactment of certain laws of New York and Massachusetts, imposing a tax upon passengers, either foreigners or citizens coming into the ports in those States, was in conflict with the power of Congress over commerce. The case of *Smith v. Turner* arose under the health laws of New York. By the seventh section of the act of that State under consideration, it was provided, "that the health commissioner shall demand, and be entitled to receive, etc., from the master of every vessel from a foreign port, for himself and each cabin passenger, etc., one dollar, and the master of each coasting vessel from the States of New Jersey, Connecticut, and Rhode Island, shall not pay for more than one voyage in each month." The eighth section provided that the moneys so received should be denominated "hospital moneys"; and the ninth gave "each master paying hospital moneys, a right to demand and recover from each person the sum paid on his account." The tenth provided for a forfeiture of \$100 in case of the master's failure to pay within a certain time; and the eleventh required the commissioners of health to account to the Comptroller of the State, and in case the sum received in any one year exceeded the expenses of their trust, they were to pay the surplus to the Treasurer of the Society for the Reformation of Juvenile Delinquents.

The plaintiff in error was master of the British ship, *Henry Bliss*, and landed at New York in June, 1841, two hundred and ninety steerage passengers, and, refusing to pay the required tax, the defendant in error brought an action against him therefor, whereupon he filed a demurrer,

¹⁸ 7 Howard 283 (1848).

on the ground that the act was a regulation of commerce, and in conflict with the Constitution of the United States. The Supreme Court of the State overruled the demurrer, and the Court of Errors affirmed the judgment, and thereupon it was taken before the Supreme Court of the United States. Justice McLean, in delivering the opinion of the Court, concurred in by Justices Catron, Grier, McKinley, and Wayne, and dissented to by Chief Justice Taney, and Justices Nelson, Daniel, and Woodbury, considered the case under two general heads: "1. Is the power of Congress to regulate commerce an exclusive power?" and "2. Is the statute of New York a regulation of commerce?" Both of these propositions were answered in the affirmative by the court.

The case of *Norris v. the City of Boston* brought before the court the judgment of the Supreme Court of Massachusetts, which was in favor of the constitutionality of "an act relating to alien passengers," passed April 20, 1837. This act contained provisions which, according to the view taken in the case of *Smith v. Turner*, were considered regulations of commerce, and not within the constitutional power of the State to enact. These provisions were as follows: Section 1 provided for an examination of all alien passengers on board by an official designated by the city government of Boston. Section 2 stated "If, on such examination, there shall be found among said passengers any lunatic, idiot, maimed, aged or infirmed person, incompetent in the opinion of the officer so examining, to maintain themselves, or who have been paupers in any country, no such alien passenger shall be permitted to land, until the master, owner, consignee or agent of such vessel, shall have given to such city or town a bond in the sum of one thousand dollars, with a good and sufficient security, that no such lunatic, or indigent passenger shall become a city, town, or State charge, within ten years from the date of the said bond." Section 3 was to the effect that "no alien passenger, other than those spoken of in the preceding section, shall be permitted to land until the master, owner,

consignee, or agent of such vessel, shall pay to the regularly appointed boarding officer the sum of two dollars for each passenger so landing; and the money so collected shall be paid into the treasury of the city or town, to be appropriated as the city or town may direct for the support of foreign paupers."

In his defense of the Massachusetts law, the counsel representing the City of Boston stated: "The law of Massachusetts was not made for the purpose of regulating foreign commerce, although it affects it so far as is necessary in providing for the regulation of a class of persons connected with it, but it is in fact an act modifying the pauper laws of the State, and designed to mitigate, in some degree, the burdens attempted to be thrown upon us in subjecting us to support the alien poor. . . .

"The act is in every feature manifestly a pauper law, growing out of a pressing emergency. . . . The State has exercised for two hundred years the right to make pauper laws. Can she do it now? I contend that this power is one of her attributes of sovereignty, which she has never surrendered, and now has the right to enjoy. . . .

"The law of Massachusetts has no reference whatever to foreign commerce, except as the instrument employed to inflict an injury upon the State. It is the avenue through which these persons are introduced, and is controlled just so far as is necessary to mitigate the evil and make it endurable, but no farther. Can we not do this? . . . I have read the language of this bench, in which they concede the right and declare it to be our duty, to exercise our police power by protective and preventive measures. We are warned that it is as much our duty to provide against the moral pestilence of pauperism as against infection. . . .

"We may protect ourselves, says the court; but when, how, where? . . . What can a State do to avert or prevent, after the paupers and vagabonds are landed and mixed with the population? Such an exercise of the power conceded to us would be barren and useless. We must meet it on shipboard, as we do disease and dangerous merchan-

dise. There we can put our hands upon the lunatics, idiots, aged and infirm paupers, etc. There we can learn what the shipowner, the master, and the agents for emigration are about. There we can detect their conspiracy with the parishes of Europe to transfer their poor and their culprits to this country, to poison our morals and increase our burdens. There is the place, and the only place, to apply the corrective, where the evidence can lead to no mistake. If we cannot meet the evil here, and regulate it here, the power to expel and the power to prevent are empty and worthless."

All of the judges delivered written opinions in these so-called "Passenger Cases."¹⁰ In *Smith v. Turner* Justice McLean stated; "The case of the *City of New York v. Milne*, 11 Pet., 102, is relied on with great confidence as sustaining the act in question. As I assented to the points ruled in that case, consistency, unless convinced of having erred, will compel me to support the law now before us, if it be the same in principle. . . . In the *Milne* case a duty was not laid upon the vessel or the passengers, but a report only was required from the master. Now every State has an unquestionable right to require a register of the names of the persons who come within it to reside temporarily or permanently. It opposed no obstruction to commerce, imposed no tax nor delay, but acted upon the master, owner or consignee of the vessel, after the termination of the voyage, and when he was within the territory of the State, mingling with its citizens, and subject to its laws.

"But the health law, as it is called, under consideration, is altogether different in its objects and means. It imposes a tax or duty on the passengers, officers and sailors, holding the master responsible for the amount at the immediate termination of the voyage, and necessarily before the passengers have set their feet on land. . . . The principle involved is vital to the commercial power of the Union. . . . The police power of the State cannot draw within its

¹⁰ 7 Howard 283 (1848).

jurisdiction objects which lie beyond it. In guarding the safety, health, and morals of its citizens, a State is restricted to appropriate and constitutional means. . . . The act of New York which imposes a tax on passengers of a ship from a foreign port, in the manner provided, is a regulation of foreign commerce, which is exclusively vested in Congress: and the act is therefore void."

Justice Grier said: "It is true, that if a State has an absolute and uncontrolled right to exclude, the inference that she may prescribe the conditions of entrance, in the shape of a license or tax, must necessarily follow. The conclusion can not be evaded if the premises be proved. A right to exclude is a power to tax; and the converse of the proposition is also true, that a power to tax is a power to exclude; and it follows, as a necessary result, from this doctrine, that those States in which are situated the great ports or gates of commerce have a right to exclude, if they see fit, all immigrants from access to the interior States, and to prescribe the conditions on which they shall be allowed to proceed on their journey. . . . If these States retain all the rights of sovereignty, as this argument assumes, one of the chief objects for which this Union was formed has totally failed, and 'we may again witness the scene of conflicting commercial regulations and exactions which were once so destructive to the harmony of the States, and fatal to their commercial interests abroad.'

"To guard against the recurrence of the evils, the constitution has conferred on Congress the power to regulate commerce with foreign nations, and among the States in order that, as regards our intercourse with other nations and with one another, we might be one people—not a mere confederacy of sovereign States for the purpose of defense or aggression."

Immediately after the decision in the Passenger Cases, the State of New York modified her statute with a view, no doubt, to avoid the constitutional objection. At the time the constitutionality of the law as modified, was again challenged before the Supreme Court of the United States,

in *Henderson et al v. Mayor of New York et al*,²⁰ its provisions were as follows: The master or owner of every vessel landing passengers from a foreign port was bound to make a report similar to the one recited in the statute held to be valid in the case of *New York v. Milne*; and on this report the Mayor was to indorse a demand upon the master or owner that he give a bond for every passenger landed in the city, in the penal sum of \$300, conditioned to indemnify the commissioners of immigration, and every county, city, and town in the State, against any expense for the relief or support of the person named in the bond for four years thereafter; but the owner or consignee may commute for such bond, and be released from giving it, by paying, within twenty-four hours after the landing of the passengers, the sum of one dollar and fifty cents for each one of them. If neither the bond be given nor the sum paid within the twenty-four hours, a penalty of \$500 for each pauper was incurred, which was made a lien on the vessel, collectible by attachment at the suit of the Commissioner of Emigration.

It was argued that the change in the statute took it out of the principle of the case of *Smith v. Turner*, the Passenger Case of New York. It was argued that the statute in that case was a direct tax on the passenger, while in the present case the requirement of a bond was but a suitable regulation under the power of the State to protect its cities and towns from the expense of supporting persons who are paupers or diseased, or helpless women and children, coming from foreign countries.

Mr. Justice Miller delivered the opinion of the court, in which he said: "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and if it is apparent that the object of this statute, as judged by that criterion, is to compel the owners of the vessels to pay a sum of money for every passenger brought by them from a foreign shore, and landed at the port of New York, it is as much a tax on

²⁰ 92 U. S. 259 (1875).

passengers if collected from them, or a tax on the vessel or owners as was the statute held void in the Passenger Cases. To require a heavy and almost impossible condition to the exercise of this right with the alternative of payment of a small sum of money is, in effect, to demand payment of that sum. . . . The cost of preparing the bond and approving sureties, with the troubles incident to it in each case, is greater than the sum required to be paid as commutation. It is inevitable, under such a law, that the money would be paid for each passenger, or the statute resisted or evaded. It is a law in its purpose and effect imposing a tax on the owner of the vessel for the privilege of landing in New York passengers transported from foreign countries. . . .

"It is equally clear that the matter of these statutes may be, and ought to be, the subject of a uniform system or plan. The laws which govern the right to land passengers in the United States from other countries ought to be the same in New York, Boston, New Orleans, and San Francisco. . . .

"We are of opinion that this whole subject has been confided to Congress by the constitution; that Congress can more appropriately and with more acceptance exercise it than any other body known to our law, State or national; that by providing a system of laws in these matters, applicable to all ports and to all vessels, a serious question, which has long been a matter of contest and complaint, may be effectually and satisfactorily settled."

Despite this decision declaring the commutation system unconstitutional, New York made another attempt in 1881 to find a constitutional method of collecting "head money" by passing a law which provided for the collection of one dollar for inspection purposes. This act was also declared unconstitutional in *People v. Compagnie Générale Trans-Atlantique*.²¹

Mr. Justice Miller again delivered the opinion of the court, in which he stated: "It is apparent that the object

²¹ 107 U. S. 59, decided February 5, 1883.

of these New York enactments goes far beyond any correct view of the purpose of an inspection law. The commissioners are "To inspect all persons arriving from any foreign country, to ascertain who among them are habitual criminals, or pauper lunatics, idiots or imbeciles or orphan persons, without means or capacity to support themselves and subject to become a public charge." It may safely be said that these are matters incapable of being satisfactorily ascertained by inspection. . . . In fact, these statutes differ from those heretofore held void, only in calling them in their caption 'inspection laws,' and in providing for payment of any surplus, after the support of paupers, criminals and diseased persons, into the Treasury of the United States; a surplus which it is safe to say will never exist. A State cannot make a law designed to raise money to support paupers, to detect or prevent crime, to guard against disease, and to cure the sick, an inspection law, within the constitutional meaning of that word,²² by calling it so in the title. Since the decision of this case in the circuit court, Congress has undertaken to do what this court has repeatedly said it alone had the power to do. . . . This legislation covers the same ground as the New York statute, and they cannot co-exist."

These two decisions were the death blow to all future efforts of the States to regulate immigration and to exclude certain undesirable classes. Since the Supreme Court had held "that Congress can more appropriately and with more acceptance exercise it than any other body known to our law, State or national," the Federal Government soon embarked upon a national policy of regulating immigration, which has resulted in restriction after restriction, until at the present time we have what may be called "a drastic immigration law." This transition from State to national control of immigration was inevitable, for the problem had become a national one, requiring uniform legislation. State legislation had been sufficient when the tide of immigration was not so strong. But the time had now come when

²² Article I, Section 10, Clause 2 of the Constitution of the United States.

the States could no longer handle the situation under their police powers. With the constitutional issue over authority settled for all time by these decisions of the Supreme Court, the Federal Government was in a position to deal with the problem as it saw fit. It is only natural that its first legislation should have had as its purpose the exclusion of certain undesirable classes. It was also inevitable that some time would be required before satisfactory legislation could be passed. The problem was also complicated by the coming of the "new" immigration, which became a problem only after the period of Federal legislation had begun. However, the Federal Government took steps toward legislation following the above decisions of the Supreme Court. Into a study of this Federal legislation, we shall enter in the following chapters.

CHAPTER IV

FEDERAL IMMIGRATION LEGISLATION TO 1914¹

EARLY Acts of Congress—Act of 1875—Act of 1882—Acts of 1885, 1887, 1888—Ford Committee Report—Act of 1891—Acts of 1893—Act of 1894—Recommendations of President Roosevelt in 1901—Act of 1903—Minor Acts—Act of 1907—Act of 1910—Act of 1913—Conclusions.

On March 2, 1819, Congress passed what can be designated as the first federal legislation on the subject of immigration. The provision of permanent benefit and hence of importance in this act was the stipulation that at the port of landing a full and complete report or manifest was to be made by the ship's officer to the customs authorities, which was to state the number of passengers carried, together with the name, sex, age, and occupation of each. This resulted in official statistics being collected for the first time for the year ending September 30, 1820. Since then we have a continuous record of all arrivals, increasing in detail with subsequent legal requirements. Another provision undertook to lessen the evils resulting from the intolerable overcrowding on ships bringing immigrants into the United States. It limited the number of passengers which might be carried on any ship to two to every five tons of the ship's weight. Furthermore, each ship or vessel leaving an American port was to have on board for each passenger carried sixty gallons of water, one gallon of vinegar, one hundred pounds of salted provisions, and one hundred pounds of wholesome ship bread. "It is very

¹ Most standard books on the subject of immigration deal at length with the period of Federal legislation thru the Act of 1917. Hence only investigations, reports and laws are dealt with in Chapters IV and V. Our purpose is merely to trace the expansion of these laws in order to better understand the present situation, which is but a part of the continuous development of restrictions against immigration.

doubtful how much good either of these provisions ever did to the immigrants. The clause in regard to overcrowding, based as it was merely on the ship's total weight, was wholly inadequate to prevent extreme overcrowding in such parts of the vessel as might be assigned to passengers. And as far as the provision regarding supplies is concerned, it could have been of no help to the immigrants, as it applied only to ships leaving an American port."²

Despite the horrible conditions existing on the ships, no further legislation was passed until 1847, when, on February 22, Congress passed a law superseding that of 1819, its purpose being to remedy the evils of overcrowding.³ The law was very unsatisfactory and was superseded by the act of May 17, 1848, which remained in force until 1855. In the mean time the British Government in 1849 passed a law which undertook to remedy the same evils. However, conditions were but very little improved, so that in 1853 a select committee of the Senate was appointed to investigate the conditions of steerage immigration and, in particular, "the causes and the extent of the sickness and mortality prevailing on board the emigrant ships on the voyage to this country," and to determine what legislation, if any, was necessary to secure better conditions. The committee's report of August 2, 1854⁴ resulted in the enactment of a law March 3, 1855, which, with slight modifications, governed the carriage of immigrants up to 1882. The act of 1855 limited the number that could be brought to one for every two tons, not including children under one year, and counted two children between one and eight years of age as one person. It also provided that each passenger on the main and poop decks of vessels should have sixteen feet of floor space, and on the lower decks eighteen feet. Concerning this act the Immigration Commission stated, "Theoretically the law of 1855 provided for an increased

² Fairchild, *op. cit.*, p. 66.

³ See Abbott, *Immigration*, Section I, for a number of original documents dealing with steerage conditions 1751-1882.

⁴ See Senate Committee Report No. 386, 33rd Congress, 1st session.

air space, better ventilation, and improved accommodations in the way of berths, cooking facilities, the serving of food, free open deck space, and so forth. Although the evil of overcrowding, which had been attended with such disastrous results in former years, appears to have been especially aimed at by the makers of the law, the wording of the act was, unfortunately, such that the provisions relating to the number of passengers to be carried were inoperative, as far as the United States law was concerned, between 1855 and 1882.”⁵

In 1860 an act was passed amending the steerage law which was designed to secure much-needed protection for female passengers from immoral conduct on the part of members of the crew. A fine of \$1,000 was imposed on any person employed on any ship of the United States who was found guilty of such conduct, and members of the crew were forbidden to visit parts of the ship assigned to immigrants, except under the direction or with the permission of the commanding officer.

Another law, the Act of 1864, deserves mention. It provided that the President should appoint a “Commissioner of Immigration”; that immigrants might assign their wages for a year or less or encumber their land in order to pay the expenses of emigrating; that no immigrant, unless he should declare his intention to become a citizen, should be liable to military service in the Civil War; that a United States Emigrant Office should be established in New York City, and the superintendent should make contracts with railroads and transportation companies for carrying immigrants to their destination, and should provide them with all needed information; and that the Commissioner should furnish an annual report to Congress of the workings of his bureau. However, this act was in the nature of a War measure, designed to fill the places of the men sent to the front, and since the necessity for its continuation ceased when the men in the army re-entered peaceful pursuits, it was repealed in 1868.

⁵ Rept. Imm. Com., Steerage Legislation, abs., p. 11.

The next exercise of the power of Congress over immigration was not in order to regulate immigration generally, but to suppress one specific evil, the coolie trade. The Act of February 19, 1862⁶ and the Act of February 9, 1869,⁷ which prohibited the building, equipping, loading, or preparing any vessel licensed, enrolled, or registered in the United States for procuring coolies from any Oriental country to be held for service or labor, were not specifically directed against the Chinese as such, but against a grade of cheap Oriental labor imported largely under a system of contract which amounted to a species of slavery. Vessels employed in the coolie trade were to be forfeited, and the building of vessels to engage in this trade, as well as the trade itself, was made a criminal offense. The act did not, however, interfere with the voluntary emigration of coolies or others if a certificate had been made before the consular agent of the United States, at the port of departure, certifying to the fact of such voluntary emigration.

However, the period of Federal legislation, which has resulted in the growth of a complicated body of federal immigration laws, may be said to have really begun with the act of March 3, 1875, although it is also sometimes dated from the Act of August 3, 1882, since the latter is the first inclusive federal immigration law.

The act of March 3, 1875⁸ prohibited the importation of women for purposes of prostitution and alien convicts. The immigration of large numbers of Chinese laborers into the Pacific Coast States had resulted in a demand for Chinese and Japanese prostitutes and certain persons were making it a business to import them. Section 1 of the act gave the consular officer at the port from which it was proposed to convey these women, authority to make inquiry as to whether the emigration was free and voluntary or whether it was under contract, the women to be used for lewd and immoral purposes. If the latter, then the consular official could not deliver the required certificate or permit to the master of the vessel. Any citizen of the United States or

⁶ 12 Stat. 340.

⁷ 15 Stat. 269.

⁸ 18 Stat. 477.

other person amenable to the laws of the United States who transported subjects of China or Japan to the United States without their free consent was subject to fine and imprisonment. Section 3 declared the importation of women for purposes of prostitution a felony and the contract was to be declared void. Section 4 declared it to be a felony to import any coolie into the United States. Section 5 declared "That it shall be unlawful for aliens of the following classes to immigrate into the United States, namely, persons who are undergoing a sentence for conviction in their own country of felonious crimes other than political or growing out of or the result of such political offenses, or whose sentence has been remitted on condition of their emigration, and women imported for purposes of prostitution." It was necessary to exclude alien convicts because the practice was still common on the part of certain countries to remit sentences on the condition of emigration. The act provided for the search of vessels suspected of containing persons of the excluded classes which applied to immigrants from all countries, whether Oriental or not,⁹ although the facts are that many continued to get into the United States. However, this law was a step forward in the right direction toward restriction, for it provided for the exclusion of at least three obviously undesirable types of immigrants,—the coolie, the alien convict and the foreign prostitute.

The enormous immigration of 1882, which totalled 788,992, a point which had never been reached before and was not reached again until 1903; the agitation of the laboring classes, who were adversely affected by it; and the important decisions of the Supreme Court, previously discussed, which declared State restrictions of immigration to be illegal regulations of commerce, led to the passage in that year of the first general immigration law. Section 1 of the Act of August 3, 1882¹⁰ provided that a duty of fifty cents was to be levied on each and every passenger not a citizen of the United States who came from a foreign port

⁹ U. S. v. Johnson, 7 Fed. Rep. 453 (1881).

¹⁰ 22 Stat. 214.

to any port within the United States. This duty was to be collectible at the port of landing and paid into the United States Treasury and to be known as the "immigrant fund." There was the provision that "The money thus collected shall be used to defray the expense of regulating immigration under this act, and for the care of immigrants arriving in the United States, for the relief of such as are in distress, and for the general purposes and expenses of carrying this act into effect, . . . Provided, That no greater sum shall be expended for the purposes hereinbefore mentioned, at any port, than shall have been collected at such port." This was the provision to which Mr. Justice Miller referred in *People v. Compagnie Générale Trans-Atlantique*, when, in declaring the inspection law of New York, which imposed a head tax, illegal, he said, "the two cannot co-exist."

Section 2 provided "That the Secretary of the Treasury is hereby charged with the duty of executing the provisions of this act and with supervision over the business of immigration into the United States, and for that purpose he shall have power to enter into contracts with such State commissions, board or officers as may be designated for that purpose by the governor of any State to take charge of the local affairs of immigration in the ports within the said State." The examination of the condition of passengers on arrival was made the duty of the State boards or commissions. This section also extended the number of excluded classes as follows: "if on such examination there shall be found among such passengers any convict, lunatic, idiot or any person unable to take care of himself or herself without becoming a public charge, they shall report the same in writing to the collector of such port, and such persons shall not be permitted to land." Section 3 empowered the Secretary of the Treasury to make proper provisions to protect immigrants from fraud and loss, and to carry out the law. Section 4 stated, "That all foreign convicts except those convicted of political offenses, upon arrival, shall be sent back to the nations to which they be-

long and from whence they came." Section 5 provided, "That this act shall take effect immediately."

The important things to note in this act of 1882 are (1) the imposition of a federal head tax; (2) the extension of the excluded classes to include lunatics, idiots, and persons likely to become a public charge; (3) the return of excluded aliens at the expense of the ship owners; and (4) the assignment of the responsibility for the execution of the immigration laws to the Secretary of the Treasury, although State commissions were to continue to do the actual work of examination. In this act Congress put up several bars to exclude certain undesirable classes and to check immigration. This was indeed a big and important step forward,—the first one of any real importance, either state or national.

The next act dealing with the subject of immigration was section 22 of the act of July 26, 1884, "An act to remove certain burdens on the American merchant marine, etc.,"¹¹ which was designed to eliminate a discrimination against the water transportation in favor of land transportation from Canada and Mexico. It provided that until the provisions of the Act of August 3, 1882, "shall be made applicable to passengers coming into the United States by land carriage, said provisions shall not apply to passengers coming by vessels employed exclusively in the trade between the ports of the United States and the ports of the Dominion of Canada or the ports of Mexico." It was obvious that if persons from these countries, who came by water, were subject to the same tax and to the same examination and restrictions as immigrants from European countries, they would when possible, come by means of land transportation.¹²

¹¹ 23 Stat. 58.

¹² For. Rel. 1888, I, 808-9, or Moore's *Digest*, Vol. IV, p. 163, gives an interesting case. Concerning the settlement of a number of Indians in British Columbia within the territory of Alaska, the Secretary of the Treasury stated that as section 1 of the Act of August 3, 1882 applied only to passengers who should "come by steam or sail vessel from a foreign port to any port within the United States," and section 22 of the Act of June 26, 1884, in effect abolished the capitation tax on immigrants from contiguous foreign territory, the immigration in question was not unlawful.

The Act of February 26, 1885 forbade the immigration of aliens under contract to labor. By section 1 it was made "unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia."

By section 2 all such contracts or agreements were declared to be "utterly void and of no effect." By section 3 a penalty of \$1,000 was imposed on every violation of the first section, the fine to be paid by the person, partnership, company, or corporation violating the law.

Section 4 provided that "the master of any vessel who shall knowingly bring within the United States on any such vessel, and land, or permit to be landed, from any foreign port or place, any alien laborer, mechanic, or artisan who, previous to embarkation on such vessel, had entered into contract or agreement, parol or special, express or implied, to perform labor or service in the United States, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and every such alien laborer, mechanic or artisan so brought as aforesaid, and may also be imprisoned for a term not exceeding six months."

Section 5 provided for the following exception from the provisions of the law: "That nothing in this act shall be so construed as to prevent any citizen or subject of any foreign country temporarily residing in the United States, either in private or official capacity, from engaging, under contract or otherwise, persons not residents or citizens of the United States to act as private secretaries, servants, or domestics for such foreigners temporarily residing in the United States as aforesaid; nor shall this act be so con-

strued as to prevent any person, or persons, partnership, or corporation from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the United States in or upon any new industry not at present established in the United States: Provided, That skilled labor for that purpose cannot be otherwise obtained; nor shall the provisions of this act apply to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants: Provided, That nothing in this act shall be construed as prohibiting any individual from assisting any member of his family or any relative or personal friend, to migrate from any foreign country to the United States, for the purpose of settlement here."

This act of February 26, 1885 is popularly known as the "Alien Contract Labor Law." After the recovery from the panic of 1873, there was a marked growth in the ranks of organized labor due to the fact that industrial enterprises, especially mining, developed rapidly. Conflicts between the employers and the employees were the inevitable result. In order to resist the demands of the latter, the employers began to import from Europe large numbers of laborers under contract to work for lower wages than the labor unions asked and demanded. This resulted in pressure being put on Congress to pass legislation to prevent such importation of unskilled labor under contract which was always willing and able to accept lower wages since its standard of living was lower than that of American labor. Congress heeded the demand when it passed the above law, the constitutionality of which was upheld by the courts under the commerce clause in the Constitution.¹³ However, the courts pointed out a weakness to be remedied when it was held that an offer to employ followed by the

¹³ The following cases have dealt with the contract labor provision: *U. S. v. Craig*, 28 Fed. Rep. 795 (1886); *Re Florio*, 43 Fed. Rep. 114 (1890); *Lees v. U. S.*, 150 U. S. 476 (1893); *Church of the Holy Trinity v. United States*, 143 U. S. Reports 457 (1892); *Botis v. Davies et al.*, Immigration Inspectors, 173 Fed. Rep. 996 (1909); *United States v. International Silver Company*, 271 Fed. Rep. 925 (1921).

immigration of the alien did not violate the provisions of the law against contract labor, since the contract had not been fully and directly made. Under this interpretation employers desiring to import labor soon found the means to let it be known that employment was to be had at such and such a place, without making a contract, if the unskilled labor desired would emigrate there.¹⁴ While it is sometimes argued that it would be very difficult for any person who had the slightest idea of what he was going to do in this country to prove himself outside the letter of the law, yet it is not difficult to draw the line between immigration which has been assured of employment at certain places, especially when the assurance has come from an agent who is paid a bonus, and immigration that comes without such an artificial inducement.¹⁵

By the Act of February 23, 1887, the execution of the Act of February 26, 1885 was committed to the Secretary of the Treasury, who "shall establish such regulations and rules, and issue from time to time such instructions, not inconsistent with the law, as he shall deem best calculated for carrying out the provisions of this act," and it provided "that all persons included in the prohibition in this act, upon arrival, shall be sent back to the nations to which they belong and from whence they came. . . . The expense of such return of the aforesaid persons not permitted to land shall be borne by the owners of the vessels in which they came."¹⁶

By the Act of October 19, 1888, the Act of February 23, 1887 was "so amended as to authorize the Secretary of the Treasury, in case he shall be satisfied that an immigrant has been allowed to land contrary to the prohibition of the

¹⁴ See Extract from "Immigration," Reports of the U. S. Industrial Commission, XV (1901), pp. 647-48 for a discussion of the difficulties under the contract labor legislation.

¹⁵ For typical cases under the contract labor law see the Annual Report of the Commissioner-General of Immigration for 1908, pp. 130-133. See also his report for 1914 for an account of some contract labor cases in which large fines were assessed.

¹⁶ 24 Stat. 414.

law, to cause such immigrant within the period of one year after landing or entry, to be taken into custody and returned to the country from whence he came, at the expense of the owner of the importing vessel, or, if he entered from an adjoining country, at the expense of the person previously contracting for his services."¹⁷ This provision is important in that it again introduced the principle of deportation after landing, a principle to be distinguished from exclusion or restriction of immigration. The acts of 1887 and 1888 were amendatory to the Alien Contract Labor Law. Taken together the wording is strict and very inclusive. The burden of proof is upon the immigrant.

It is interesting to note that on May 17, 1889 the Swiss minister at Washington brought to the attention of the Department of State the case of certain citizens of Switzerland whom the authorities at New York had refused to permit to land under the laws then existing and had caused to be sent back to Europe. "The minister stated that by the Swiss federal law of March 22, 1888, it was provided that emigration agencies should not ship to foreign countries any persons who were not allowed to enter there by the laws in force in such countries. For such sending the law provided appropriate penalties. The minister therefore requested to be advised of the exact reasons why the persons in question had not been allowed to land. It appeared by investigation that two of them were sent back because they were unable to take care of themselves, and were likely to become a public charge; that another was subject to the same objections, besides being a convict, who had served a term of imprisonment in Switzerland, while three others were returned as paupers."¹⁸ This correspondence not only recognized the right of the United States to exclude immigrants, but it also indicates that the laws were working to exclude at least some undesirables.

However, that the enforcement of these laws was not

¹⁷ 25 Stat. 566.

¹⁸ Moore's *Digest*, Vol. IV, p. 164, or *For. Rel.* 1889, 701-2

what it should have been is evident from the "Report of the Ford Committee, the Select Committee to Inquire into the Importation of Contract Laborers, Convicts, Paupers, etc. January, 1889."¹⁹ This report stated: "Owing to the large number of immigrants received each day during the spring and summer months questions must be asked rapidly, and the inspection is necessarily done in a very hurried manner, in order that there may be no undue delay in landing them. . . . The testimony taken puts it beyond doubt that large numbers of persons not lawfully entitled to land in the United States are annually received. . . . New York State annually expends in taking care of paupers, insane persons, etc., \$20,000,000, and this condition of affairs is largely due to improper immigration. . . . Along the border between Canada and the United States no inspection whatever is made of immigrants; and alien paupers, insane persons, etc., may land at Quebec and at once proceed to this country without any let or hindrance. . . . Many persons belonging to the criminal class have been sent to the United States by officials of the European Governments and they have persisted in this course even after having been requested by officials of our government to discontinue it. . . . Evasions of the contract labor law are much more numerous than convictions. . . . In the opinion of the committee the non-enforcement of these acts is not so much due to a want of diligence on the part of the officials having their administration in charge as it is to a lack of proper machinery to carry them into effect. The committee believe that the enforcement of all acts designed to regulate immigration should be intrusted to the Federal Government and not to the States. The regulation of immigration is a matter affecting the whole Union, and is pre-eminently a proper subject for Federal control. . . ."

An increase in immigration after 1886, until in 1891 it had reached more than 560,000, together with the ascertained inefficiency of the laws passed up to that time, led to a general codification and strengthening of the various

¹⁹ 50th Congress, 2nd Session, House Report, No. 3792.

statutes in the Act of March 3, 1891. This act added to the excluded classes paupers, persons suffering from a loathsome or dangerous contagious disease, polygamists and persons whose tickets of passage had been paid for by another or who had been assisted by others to come, unless it was affirmatively shown on special inquiry that they were not otherwise objectionable. Under this act then the number of excluded classes had increased to seven, other than Chinese laborers. These were all idiots, insane persons, paupers or persons likely to become a public charge, persons suffering from a loathsome or dangerous contagious disease, persons who had been convicted of a felony or other infamous crime or misdemeanor involving moral inturpitude, polygamists and assisted immigrants. However, section 1 stated: "but this section shall not be held to exclude persons living in the United States from sending for a relative or friend who is not of the excluded classes under such regulations as the Secretary of the Treasury may prescribe: Provided, That nothing in this act shall be construed to apply to or exclude persons convicted of a political offense, notwithstanding said political offense may be designated as a 'felony, crime, infamous crime, or misdemeanor, involving moral inturpitude' by the laws of the land whence he came or by the court convicting."

Section 3 deemed it a violation of the Act of February 26, 1885 "to assist or encourage the importation or migration of any alien by promise of employment through advertisements printed and published in any foreign country; and any alien coming to this country in consequence of such an advertisement shall be treated as coming under a contract as contemplated by such act."²⁰

Section 4 provided that "no steamship or transportation company or owner of vessels shall directly, or through agents, either by writing, printing, or oral representations, solicit, invite, or encourage the immigration of any alien into the United States except by ordinary commercial letters, circulars, advertisements, or oral representatives,

²⁰ U. S. v. Baltic Mills Co., 124 Fed. Rep. 38 (1903) upheld this.

stating the sailings of their vessels and the terms and facilities of transportation therein." Thus, soliciting of immigration was forbidden, a violation of which was subject to the same penalties as those imposed by the third section of the Act of February 26, 1885. However, despite the law, violations continued, the immigrants being well-coached and warned on the subject so as to make it difficult to obtain the evidence necessary in many cases to justify deportation.

By section 5 the fifth section of the Act of February 26, 1885 is "amended by adding to the second proviso in said section the words 'nor to ministers of any religious denomination, nor persons belonging to any recognized profession, nor professors for colleges and seminaries,' and by excluding from the second proviso of said section the words 'or any relative or personal friend.' "

By section 6, the bringing into or landing in the United States, or the aiding in so doing, by vessel or otherwise, of any alien not lawfully entitled to enter is made a misdemeanor, punishable by a fine not exceeding \$1,000, or by imprisonment not exceeding a year, or both.

Section 7 created the office of superintendent of immigration in the Treasury Department.

By section 8, provision is made for the medical inspection of alien immigrants by surgeons of the Marine Hospital Service; and it declared that "all decisions made by the inspection officers or their assistants touching the right of an alien to land, when adverse to such right, shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury." This section enlarged the scope of the Immigration Bureau's work in that it took away the power of inspection from the state boards and commissions, and it also took away from the courts the power to revise the decision of immigration officers that an immigrant should not be permitted to land,²¹ but it was held later that the courts had the power to pass upon the ques-

²¹ *Ekiu v. United States*, 142 U. S. 651 (1892).

tion whether the petitioner were an alien immigrant or not.²²

By the same section "the Secretary of the Treasury may prescribe rules for inspection along the borders of Canada, British Columbia, and Mexico so as not to obstruct or unnecessarily delay, impede, or annoy passengers in ordinary travel between said countries." In the same section was the provision that any officer or agent or person in charge of a vessel, who shall knowingly or negligently land or permit to land any alien immigrant at a place or time other than that designated by the inspection officers, may be punished as for a misdemeanor, as under Section 6.

By Section 9, local peace officers are permitted to make arrests for crimes under the local laws at immigrant stations.

Section 10 provided that "all aliens who may unlawfully come into the United States shall, if practicable, be immediately sent back on the vessel by which they were brought in," the cost of their return, including their maintenance while on land, to be borne by the owners; and any master, agent, consignee or owner refusing to perform these duties is guilty of a misdemeanor, punishable with a fine of not less than \$300 for each and every offense, besides refusal of clearance to the vessel while the fine is unpaid.

Section 11 stated, "That any alien who shall come into the United States in violation of law may be returned as by law provided, at any time within one year thereafter, at the expense of the person or persons, vessel, transportation company, or corporation bringing such alien into the United States, and if that cannot be done, then at the expense of the United States; and any alien who becomes a public charge within one year after his arrival in the United States from causes existing prior to his landing therein shall be deemed to have come in violation of law and shall be returned as aforesaid."

By Section 12, all proceedings, criminal or civil, begun

²² Re Simone, 108 Fed. Rep. 942 (1901). See *Quon Quon Poy v. Johnson*, infra p. 302, for an important case decided February 21, 1927. Also see cases cited in note 14 on p. 140.

under previous acts, were saved; and by Section 13, the United States circuit and district courts "are hereby invested with full and concurrent jurisdiction of all causes, criminal and civil, arising under any of the provisions of this act; and this act shall go into effect on April 1, 1891."

It is obvious from the above provisions that this was the most comprehensive law ever passed up to that time. The important provisions were, (1) the extension of the excluded classes; (2) the prohibition of encouragement of immigration by advertising or solicitation; (3) the abolition of the exception which had almost destroyed the former law, which permitted persons here to assist "any relative or personal friend" to enter the United States regardless of the alien contract labor law; (4) the requirement of manifests; (5) the complete assumption of the work of inspection by the Federal Government; (6) the extension of the principle of deportation to public charges. Here were important additional bars to immigration. By this act the wall was built considerably higher to check the ever-swell-ing tide of immigration, which since 1880 had begun to flow from a new source,—viz., from southern and eastern Europe.

By the Act of February 15, 1893,²³ which granted additional quarantine powers and imposed additional duties upon the Marine Hospital Service, it was provided in Section 7, "That whenever it shall be shown to the satisfaction of the President that by reason of the existence of cholera or other infectious or contagious diseases in a foreign country there is serious danger of the introduction of the same into the United States, and that notwithstanding the quarantine defense this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce the same is demanded in the interests of the public health, the President shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate and for such period of time as he may deem necessary."

²³ 27 Stat. 449, 452.

The Act of March 3, 1893 ²⁴ was merely an administrative measure covering the inspection and deportation of aliens, made necessary by the extensions of jurisdiction and the list of excluded classes in the Act of 1891. It did not, however, add to the excluded classes.

By Section 1 the masters of vessels having on board alien immigrants are required to deliver on arrival to the inspector of immigration "lists or manifests made at the time and place of embarkation of such alien immigrants on board such steamer or vessel, which shall, in answer to questions at the top of said lists, state as to each immigrant the full name, age, and sex, whether married or single; the calling or occupation; whether able to read or write; the nationality; the last residence; the seaport for landing in the United States; the final destination, if any, beyond the seaport of landing; whether having a ticket through to such final destination; whether the immigrant has paid his own passage or whether it has been paid by other persons or by any corporation, society, municipality, or government; whether in possession of money, and if so, whether upwards of thirty dollars and how much if thirty dollars or less; whether going to join a relative, and if so, what relative and his name and address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or supported by charity; whether a polygamist; whether under contract, express or implied, to perform labor in the United States; and what is the immigrant's condition of health mentally and physically, and whether deformed or crippled, and if so, from what cause." It is obvious that this greatly enlarged the detailed information to be included in the manifests.

By Section 2, no one list or manifest shall group more than thirty names; each immigrant or head of family must be ticketed for identification; and each list or manifest must be verified in a prescribed manner, the master of the vessel having to certify that he and the ship's surgeon have

²⁴ 27 Stat. 569.

made an examination of all the immigrants before sailing, and believe none of them to belong to the excluded classes.

Section 3 requires each list or manifest to be certified in like manner, under oath or affirmation, before the departure of the vessel, by the vessel's surgeon, or, if none, by some competent surgeon employed by the owners of the vessel. Section 4 imposes on the master of the vessel a fine of ten dollars for each immigrant qualified to enter the United States who is not duly listed, or manifested, besides excluding such immigrants and requiring them to be "returned like other excluded persons."

By Section 5 the inspector is required to "detain for a special inquiry," under Section 1 of the Act of March 3, 1891, "every person who may not appear to him to be clearly and beyond doubt entitled to admission." Special inquiries are conducted by not less than four inspectors, the concurrence of at least three of whom is necessary to a favorable decision; and such a decision may be appealed by any dissenting inspector to the superintendent of immigration, whose action is subject to review by the Secretary of the Treasury.

Section 6 relates to medical examinations and by Section 7 no bond or guaranty that an alien immigrant shall not become a public charge can be received except under specific authority of the superintendent of immigration, with the written approval of the Secretary of the Treasury. This provision was to discourage the giving of bonds, as these were found to be practically useless, owing to the expense, delay, and difficulty involved in attempting to bring suit upon them.

Section 8 requires all steamship or transportation companies and other owners of vessels, regularly engaged in transporting alien immigrants to the United States to keep conspicuously exposed to view in the office of each of their agents in foreign countries authorized to sell emigrant tickets, a copy of the laws of the United States relative to immigration, printed in large letters in the language of the coun-

try where the copy of the law is to be exposed to view and their agents are required to call the attention thereto of persons contemplating emigration before selling tickets to them.

Section 9 provided for the sale of certain privileges at Ellis Island and Section 10 provided that the act shall not apply to Chinese persons, and that the act should go into effect sixty days after its passage.

The sundry civil appropriations act of August 18, 1894²⁵ had several provisions relative to immigration as follows: "In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or custom's officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury." "The head money from alien passengers on and after the first day of October next, collected under the Act of August 3, 1882, to regulate immigration shall be one dollar in lieu of the fifty cents as provided in said act."

"The commissioners of immigration at the several ports shall be appointed by the President, by and with the advice and consent of the Senate, to hold their office for a term of four years, unless sooner removed, and until their successors are appointed."

The appointment of commissioners for the several ports, the increase of the head tax to \$1.00 and the provision concerning repeal were all steps in the right direction toward better enforcement of the laws. The last provision was an attempt to get rid of the interference of the Courts in immigration matters. Formerly habeas corpus proceedings were frequently resorted to with the result that the efficiency of executive action was much impaired. The result of this new provision was that "the right to determine whether an alien was an immigrant was taken from the courts entirely; and the immigration acts were made applicable to aliens who, having acquired a domicile here and then gone abroad, attempted to re-enter the coun-

²⁵ 28 Stat. 390.

try.²⁶ Unless, therefore, the United States admits that the immigrant is a citizen, the decision of the immigration officers as to that fact and as to their jurisdiction is final.²⁷ As this act applies, moreover, only when the decision is adverse to the right of the alien to land, if the decision be favorable, the Federal authorities can still question his right, as for example under the Chinese Exclusion Acts.²⁸²⁹

By the Act of March 2, 1895,³⁰ making appropriations for the legislative, executive and judicial expenses of the Government, the title of the Superintendent of Immigration was made Commissioner-General of Immigration; and by the Act of June 6, 1900,³¹ he was also charged with the administration of the Chinese exclusion laws.

In his annual message of December 3, 1901, President Roosevelt stated: "Our present immigration laws are unsatisfactory. There should be a comprehensive law enacted with the object of working a three-fold improvement over our present system. First, we should aim to exclude absolutely not only all persons who are known to be believers in anarchistic principles or members of anarchistic societies, but also all persons who are of a low moral tendency or of unsavory reputation. This means that we should require a more thorough system of inspection abroad and a more rigid system of examination at our immigration ports, the former being especially necessary.

"The second object of a proper immigration law ought to be to secure by a careful and not merely perfunctory educational test some intelligent capacity to appreciate American institutions and act sanely as American citizens. This would not keep out all anarchists, for many of them belong to the intelligent criminal class. But it would do

²⁶ *Lem Moon Sing v. United States*, 158 U. S. 538 (1895).

²⁷ *United States v. Ju Toy*, 198 U. S. 253 (1905), overruling *Re Tom Yum*, 64 Fed. Rep. 485 (1894). This would seem to be a somewhat extreme statement of the principle involved in the *Ju Toy* case. See cases cited on p. 97, note 22, and on p. 140, note 14.

²⁸ *Li Sing v. United States*, 180 U. S. 490 (1901).

²⁹ Hall, *Immigration*, p. 216.

³⁰ 28 Stat. 780.

³¹ 31 Stat. 611.

what is also in point—that is, tend to decrease the sum of ignorance, so potent in producing the envy, suspicion, malignant passion, and hatred of order out of which anarchistic sentiment inevitably springs. Finally, all persons should be excluded who are below a certain standard of economic fitness to enter our industrial field as competitors with American labor. There should be proper proof of personal capacity to earn an American living and enough money to insure a decent start under American conditions. This would stop the influx of cheap labor, and the resulting competition which gives rise to so much of bitterness in American industrial life, and it would dry up the springs of the pestilential social conditions in our great cities, where anarchistic organizations have their greatest possibility of growth.

“Both the educational and economic tests in a wise immigration law should be designed to protect and elevate the general body politic and social. A very close supervision should be exercised over the steamship companies which mainly bring over the immigrants, and they should be held to a strict accountability for any infraction of the law.”

This message but voiced the agitation for further restriction of immigration which had been growing stronger and louder during the ten years after the passage of the Act of 1893. Bills adding illiterates to the excluded classes passed one or the other house of Congress seven times in this period, and when in 1896 such an act passed both houses at the same time, it met with a veto by President Cleveland. However, it was felt by most persons familiar with the subject that the Act of 1893 left many loopholes for the admission of undesirables, and that, pending radical action by Congress, the machinery of exclusion needed repairing and strengthening. Some of these defects were enumerated in the report of an Immigration Investigating Commission in 1895, while other amendments were suggested by witnesses testifying before the Industrial Commission in 1901. A general meeting of the commissioners of the various ports was held in 1902 to obtain an expres-

sion of opinion as to the changes most needed. The final outcome of it all was the Act of March 3, 1903,³² "an act to regulate the immigration of aliens into the United States."

Section 1 provided that "there shall be levied, collected, and paid a duty of two dollars for each and every passenger not a citizen of the United States, the Dominion of Canada, the Republic of Cuba, or the Republic of Mexico, who shall come by steam, sail, or other vessel from any foreign port to any port within the United States, or by any railway or any other mode of transportation, from foreign contiguous territory to the United States. . . . The money thus collected shall constitute a permanent appropriation to be called the 'immigrant fund,' " to be used for purposes connected with the immigration of aliens.

Section 2 provided that the following classes of aliens shall be excluded from admission into the United States: (1) all idiots; (2) epileptics; (3) insane persons, persons who have been insane within five years previous, and persons who have had two or more attacks of insanity at any time previously; (4) paupers, persons likely to become a public charge, and professional beggars; (5) persons afflicted with a loathsome or with a dangerous contagious disease; (6) persons who have been convicted of a felony or other crime or misdemeanor involving moral turpitude; (7) polygamists; (8) anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials; (9) prostitutes, and persons who procure or attempt to bring in prostitutes or women for the purpose of prostitution; (10) those who have been, within one year from the date of the application for admission to the United States, deported as being under offers, solicitations, promises or agreements to perform labor or service of some kind therein; and also, (11) any person whose ticket or passage is paid for with the money of another, or who is assisted by others

³² 32 Stat., part I, p. 1213.

to come, unless it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes. It was provided, however, that "this section shall not be held to prevent persons living in the United States from sending for a relative or friend who is not of the foregoing excluded classes: Provided, That nothing in this act shall exclude persons convicted of an offense purely political, not involving moral turpitude: And provided further, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges and seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants."³³

By Section 3, "the importation into the United States of any woman or girl for the purposes of prostitution is hereby forbidden; and whoever shall import or attempt to import any woman or girl into the United States for the purposes of prostitution, or shall hold or attempt to hold, any woman or girl for such purposes in pursuance of such illegal importation shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not less than one nor more than five years and pay a fine not exceeding five thousand dollars."

Section 4 made it unlawful "to prepay the transportation or in any way to assist or encourage the importation or migration of any alien into the United States, in pursuance of any offer, solicitation, promise, or agreement, parole or special, expressed or implied, made previous to the importation of such alien to perform labor or service of any kind, skilled or unskilled, in the United States."

By Section 5 any violation of Section 4 is subject to a penalty of \$1,000, while by Section 6 it is likewise punishable "to assist or encourage the importation or migration

³³ Through an oversight in drafting this act, which was intended to be a complete codification of the then existing law, no mention was made of contract laborers among the excluded classes, but it was held that they were still excluded under the previous Acts of 1885 and 1888, a construction justified by the provisions in regard to contract laborers in this act.

of any alien by promise of employment through advertisements printed and published in any foreign country;" but this does not apply to State or Territorial advertising of inducements to immigrants. Section 7 substantially reenacts Section 4 of the Act of March 3, 1891.

By Section 8 the bringing into or landing in the United States, or the attempt to do so, by vessel or otherwise, either personally or through an agent, of an alien not duly admitted by an immigrant inspector, or not lawfully entitled to enter the United States, is a misdemeanor, subject to a fine not exceeding \$1,000 for each such act or attempt, or imprisonment for not less than three months nor more than two years, or to both such fine and imprisonment.

Sections 9, 10, and 11 relate to the exclusion of diseased persons and to medical inspections. Section 9 provides that the bringing in of any person afflicted with a loathsome or a dangerous contagious disease by any person or company, except railway lines, is forbidden. A fine of \$100 is attached for each and every violation if it appears that the disease might have been detected at the time of embarkation. Section 11 is to the effect that if a rejected alien is helpless from sickness, physical disability, or infancy, and is accompanied by an alien whose protection is required, both shall be returned in the usual way.

Section 12 substantially repeats Section 1 of the Act of March 3, 1893, except that the list or manifest must show, in addition to the other things, the alien's "race;" whether he has fifty (instead of thirty) dollars; whether he is going to join a relative "or friend," and if so, what relative or friend and his name and complete address; whether he was ever in prison or almshouse "or an institution or hospital for the care and treatment of the insane;" whether he is an "anarchist;" and whether he is "coming by reason of any offer, solicitation, promise, or agreement, expressed or implied," to perform labor, and, if deformed or crippled, "for how long," as well as from what cause.

Section 13 substantially repeats Section 2 of the Act of March 3, 1893, while Section 14 does likewise for Section 3

of the same act. Section 15 imposes, for the failure of the master or commanding officer of a vessel to deliver lists or manifests as required, a fine of \$10 "for each alien concerning whom the above information is not contained in any list as aforesaid." Sections 16 and 17 relate to the process of inspection and examination of immigrants.

By Section 18 any owner, officer, agent or person in charge of a vessel who lands or permits to land an alien at any time or place other than that designated by the immigration officers is guilty of a misdemeanor, and punishable by a fine of not less than \$100 nor more than \$1,000 for each alien, or by imprisonment not exceeding a year, or both, and every alien so landed is to be deported.

Section 19 substantially repeats Section 10 of the Act of March 3, 1891, with certain regulatory additions. By Section 20 "any alien who shall come into the United States in violation of law or who shall be found a public charge therein, from causes existing prior to landing, shall be deported as hereinafter provided to the country whence he came at any time within two years after his arrival at the expense, including one-half of the cost of inland transportation to the port of deportation, of the person bringing such alien into the United States, or if that cannot be done, then at the expense of the immigrant fund referred to in Section 1 of this act."

Section 21 contained a similar provision for deportation of all aliens, with the exception of public charges, found in the United States, in violation of this act within the period of three years after landing or entry therein.

By Sections 22 and 23 the Commissioner-General of Immigration administers the immigration laws, under the direction of the Secretary of the Treasury.

By Section 24 the appointment of immigration inspectors and other employees is put under the Civil Service rules. This section also provides that the decision of an immigration officer, if favorable to the alien, may be challenged by any other immigration officer, and in that case the alien is taken before a board of special inquiry. So. also is every

alien who may not appear to the inspector to be "clearly and beyond a doubt" entitled to land.

Section 25 provides for a board of special inquiry at the various ports of arrival, to consist of three members, such boards to "have authority to determine whether an alien who has been duly held shall be allowed to land or be deported." Their hearings are "separate and apart from the public," but they keep records of their proceedings and of testimony, "and the decision of any two members of a board shall prevail and be final," subject to an appeal by the alien or by a dissenting member to the Secretary of the Treasury, "whose decision shall then be final."

Section 26 is similar to Section 7 of the Act of March 3, 1893, while Sections 27-32 contain regulatory clauses, some of which were embraced in previous acts.

By Section 33 the words "United States" mean, for the purpose of the act, "the United States and any waters, territory, or other place now subject to the jurisdiction thereof." By Section 36 the laws relating to the immigration or exclusion of Chinese remain unaffected.

Section 37 states that if a person who had taken up his permanent residence in the United States, and has declared his intention to become a citizen, sends for his wife or minor children, and the wife or any of the children is infected with a contagious disorder, such wife or child, if the disease was contracted on the ship, must be held till it shall be "determined whether the disorder will be easily curable, or whether they can be permitted to land without danger to other persons," and meanwhile they are not to be deported.

Finally, by Section 39, anarchists, etc., are not to be naturalized, and are subject to fine and imprisonment for violation of this provision.

The outstanding provisions in this act were (1) the increase in the number of excluded classes; (2) the special attention and penalties with respect to prostitutes; (3) the enlargement of the criminal offenses against the immi-

gration acts; (4) the detention and return of aliens here in violation of the law; and (5) the better inspection of immigrants. Concerning the manifests it is worth while to state that the information in them was and still is given chiefly from answers by the immigrants to the ship's officers. Many of the questions seem absurd, for, of course, no one is likely to admit that he belongs to any of the excluded classes. Frequently the immigrants are thoroughly coached as to what answers to give to questions before leaving the port of embarkation, and in other cases they are coached during the voyage. On inspection, therefore, the answers do not agree in many instances with the information on the manifest. In respect to the amount of money the change may be a truthful one, the immigrant having spent or gambled it away while on the voyage.

By the act of February 14, 1903,³⁴ to establish the Department of Commerce and Labor, the Commissioner-General of Immigration, the commissioners of immigration, the bureau of immigration, and the immigration service at large are transferred to that department, and are placed under its jurisdiction and supervision.

The Act of March 22, 1904³⁵ extended the exemption from the head tax of two dollars to citizens of Newfoundland entering the United States. The Act of April 28, 1904³⁶ provided that the words "Secretary of the Treasury," wherever used in the Act of March 3, 1903, or in amendments thereto, or in prior acts in relation to alien immigration, be stricken out, and the words, "Secretary of Commerce and Labor" inserted in lieu thereof. In relation to the enforcement of the immigration laws in the Philippines, the Act of February 6, 1905³⁷ stated: "That the immigration laws of the United States in force in the Philippine Islands shall be administered by the officers of the general government thereof designated by an appropriate legislation of said government, and all moneys collected

³⁴ 32 Stat. 828-829.

³⁵ 33 Stat., part I, p. 144.

³⁶ 33 Stat., part I, p. 591.

³⁷ 33 Stat., part I, p. 692.

under said laws as duty or head tax on alien immigrants coming into said islands shall not be covered into the general fund of the Treasury of the United States, but shall be paid into the treasury of said islands to be used and expended for the government and benefit of said islands."

The Act of February 3, 1905 ³⁸ "Provided, That the Commissioner-General of Immigration, with the approval of the Secretary of Commerce and Labor, shall have power to refund head tax heretofore and hereafter collected under section one of the immigration Act approved March 3, 1903, upon presentation of evidence showing conclusively that such collection was erroneously made." While by the Act of March 4, 1911, ³⁹ these refunds are authorized to be made only "upon presentation of evidence showing conclusively that collection was made *through error of Government officers.*"

Due to the demand for further regulation and restriction of alien immigration a number of bills were introduced into both houses of Congress, which finally resulted in the passage of the Act of February 20, 1907. ⁴⁰

By Section 1 the head tax is raised to \$4.00 for every alien entering the United States except "that the said tax shall not be levied upon aliens who shall enter the United States after an uninterrupted residence of at least one year, immediately preceding such entrance, in the Dominion of Canada, Newfoundland, the Republic of Cuba, or the Republic of Mexico, nor upon otherwise admissible residents of any possession of the United States, nor upon aliens in transit through the United States, nor upon aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory." The tax was not to be levied on aliens arriving in Guam, Porto Rico, or Hawaii unless they came to the United States without having become a citizen of the United States. Power was given to the President, when he "shall be satisfied that passports issued by any foreign government to its

³⁸ 33 Stat., part I, p. 684.

³⁹ 36 Stat. 1363, 1442.

⁴⁰ 34 Stat., p. 898.

citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein," to refuse to permit such citizens of the country issuing such passports to enter the United States.

By Section 2 the excluded classes were extended to include imbeciles; feeble-minded persons; persons afflicted with tuberculosis; persons not comprehended within any of the foregoing excluded classes who are found to be mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of the alien to earn a living; persons who admit having committed a felony or other crime or misdemeanor involving moral turpitude; persons who admit their belief in the practice of polygamy; women or girls coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose; any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless it is affirmatively and satisfactorily shown that said ticket or passage was not paid for by any corporation, association, society, municipality, or foreign government, either directly or indirectly, except that this shall not apply to the tickets or passage of aliens in immediate and continuous transit through the United States to foreign contiguous territory; and all children under sixteen years of age, unaccompanied by one or both of their parents, at the discretion of the Secretary of Commerce and Labor or under such regulations as he may from time to time prescribe.

Section 3 stated that "whoever shall keep, maintain, control, support or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case,

be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars; and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported."

Sections 4-9 substantially repeated provisions in the act of 1903.

By Section 9 a fine of \$100 is imposed on any person bringing in aliens excluded for certain physical disabilities, if these existed and might have been detected previous to embarkation.

Section 12 added to the contents of the manifests for aliens coming into the United States. It also provided "that it shall further be the duty of the master or commanding officer of every vessel taking alien passengers out of the United States, from any port thereof, to file before departure therefrom with the collector of customs of such port a complete list of all such alien passengers taken on board. Such list shall contain the name, age, sex, nationality, residence in the United States, occupation, and the time of last arrival of every such alien in the United States."

The next change of any importance in this act occurs in Sections 20 and 21, which provide that all deportations may be within three years. Section 25 gives either the alien or any dissenting member of a board of special inquiry the right to appeal through the commissioner of immigration at the port of arrival and the Commissioner-General of Immigration to the Secretary of Commerce and Labor, except in the cases of tuberculosis, loathsome or dangerous contagious disease, or mental or physical disability, as previously provided for, in which case the decision of the board is final.

Section 26 provides that "any alien liable to be excluded

because likely to become a public charge or because of physical disability other than tuberculosis, or a loathsome or dangerous contagious disease, may if otherwise admissible, nevertheless be admitted in the discretion of the Secretary of Commerce and Labor upon the giving of a suitable and proper bond" against becoming a public charge, the amount and conditions to be prescribed by the said Secretary.

Section 39 created a joint commission on immigration to consist of three Senators, three Representatives and three persons appointed by the President of the United States, which commission was to study the immigration problem in all of its phases and report on the same. Authority was also given to the President to call an international conference if he deemed it advisable.

Section 40 provided for the establishment of a Division of Information in the Bureau of Immigration and Naturalization, whose duty shall be "to promote a beneficial distribution of aliens admitted into the United States among the several States desiring immigration."

Section 42 dealt with accommodations on ships for immigrant passengers. The last provisions on the subject had been in the Act of 1882. However, the provisions in section 42 of the Act of 1907 were not adequate nor did they correspond to the facts, hence another law was passed, December 19, 1908, which made our steerage provisions correspond with the British law on the subject, which was superior to ours in every way.

We have noted in the above act only those provisions which made changes of any importance. We find (1) a further extension of the excluded classes; (2) more stringent provisions designed to better control the evil of prostitution; (3) an extension to other classes of the fine for bringing in inadmissible aliens; (4) the beginning of permanent statistics of departing aliens; (5) no appeal permitted from the decision of a board of special inquiry in case of mental or physical disability; (6) the creation of the Joint Immi-

gration Commission; and (7) the creation of the Division of Information.

The Sundry Civil Appropriation Act of March 4, 1909⁴¹ repealed the law establishing the immigrant fund, while another act "relating to outward alien manifests on vessels bound to Canada or Mexico," also approved March 4, 1909,⁴² provided that until the provisions of Section 12 of the Act of February 20, 1907, "relating to outward alien manifests, shall be made applicable to passengers going out of the United States to Canada by land carriage, said provisions shall not apply to passengers going by vessels employed exclusively in the trade between the ports of the United States and the Dominion of Canada and the Republic of Mexico."

The next important addition to our immigration legislation was the Act of March 26, 1910.⁴³ It extended the excluded classes, among which additions was the provision to keep out "persons who are supported by or receive in whole or in part the proceeds of prostitution." The three year limit for deportation was removed as regards sexually immoral aliens by the provision that "any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported." It also provided for punishment for attempts to return after deportation, and for deportation after the expiration of sentence for violations of this section of the act. The White Slave Traffic Act⁴⁴ is closely connected with this phase of

⁴¹ 35 Stat. 969.

⁴² 35 Stat. 1060.

⁴³ 36 Stat., p. 263.

⁴⁴ June 25, 1910; 36 Stat. 825.

the immigration statutes and undertakes to lessen the evil.

By the Act of August 24, 1912⁴⁵ it was "Provided, That all charges for maintenance or return of Chinese persons applying for admission to the United States shall hereafter be paid or reimbursed to the United States by the person, company, partnership, or corporation bringing such Chinese to a port of the United States as applicants for admission."

By the Act of March 4, 1913,⁴⁶ creating the Department of Labor, all the business of immigration and naturalization was given to the newly created department, so that now the Commissioner-General, the commissioners of immigration, the Bureau of Immigration, etc., are subject to the Secretary of Labor.

Throughout the development of this body of laws well-marked tendencies can be traced. In the first place, the criteria of admission have steadily increased in severity, until in 1914 the law provided for the exclusion of virtually every undesirable class, with the probable exception of illiterates.⁴⁷ In the second place, there is an increasing concentration of all business connected with immigration in the hands of a single branch of the Federal Government. Third, we find an increasing determination on the part of the United States to assert its right to protect itself against unwelcome additions to its population, not only by refusing them admission, but by expelling them from the country when we deem it expedient for our own welfare. It is evident from the laws themselves that bar after bar was put up as time went on. Not once have we found a provision which let down a single bar once it had been put up. Although the early efforts were largely futile, the laws brief and the machinery inadequate, yet progress was rapid, so that by 1914 we were in a position to make further, more drastic and more effective restrictions than ever before.

⁴⁵ 37 Stat. 475.

⁴⁶ 37 Stat. 736.

⁴⁷ On March 2, 1897, President Cleveland vetoed a bill which would have excluded illiterates. On February 14, 1913, President Taft vetoed a similar bill. See *infra*, pp. 130-132.

While the World War delayed the necessity for such legislation yet it was soon evident that it had also created a greater necessity than ever before for restrictions more drastic than any previously dreamed of.

CHAPTER V

FEDERAL IMMIGRATION LEGISLATION, 1914-1921

RECOMMENDATIONS of the Immigration Commission—Public opinion and the literacy test—The Immigration Act of 1917—Act of December 26, 1920—The Alien Anarchist Act of 1918-1920—Act of May 10, 1920—Act of June 5, 1920—Summary.

In the "Brief Statement of the Investigations of the Immigration Commission, with Conclusions and Recommendations,"¹ we find some interesting facts concerning the operation of the laws then existing, together with recommendations for future legislation. The commission stated: "The present emigration from Europe to the United States is in the largest measure due to economic causes. . . . The United States Government makes no effort to induce immigration. . . . The immediate incentive of the great bulk of present-day immigration is the letters of persons in this country to relatives or friends at home. . . . A large number of immigrants are induced to come by quasi labor agents. . . . Another important agency in promoting emigration from Europe to the United States are the many thousands of steamship-ticket agents and subagents operating in the emigrant-furnishing districts of southern and eastern Europe. . . . While, unfortunately, the present law, from the difficulty in securing proof, is largely ineffectual in preventing the coming of criminals and other moral delinquents, it does effectively debar paupers and the physically unsound and generally the mentally unsound. . . . It is highly desirable both for humanitarian and medical reasons that aliens who are not admissible to the United States should be turned back at foreign ports of embarka-

¹ Reports of the U. S. Immigration Commission, I, 25-49 (1911).

tion, or better still, that they should not leave their homes for such ports only to be returned. . . . No adequate means have been adopted for preventing the immigration of criminals, prostitutes, and other morally undesirable aliens. In spite of the stringent law, criminals or moral defectives of any class, provided they pass the medical inspection, can usually embark at European ports and enter the United States without much danger of detection. . . . The coming of criminals and persons of criminal tendencies constitutes one of the serious social effects of the immigration movement. The present immigration law is not adequate to prevent the immigration of criminals, nor is it sufficiently effective as regards the deportation of alien criminals who are in this country. . . . The best place to bar alien criminals is in their own countries, and the best way is through the utilization of the police records of such countries. . . . The immigration of the mentally defective aliens is reasonably well controlled under the existing immigration law. It is entirely possible, however, that persons may exhibit no evidence of insanity and yet that they may become insane within a short time after their admission. Until some means can be devised of informing the immigration authorities as to the previous mental history of arriving aliens, the present safeguards are practically all that can be afforded. . . . There are probably at the present time relatively few actual contract laborers admitted. There are annually admitted, however, a very large number who come in response to indirect assurance that employment awaits them. It is clear that there is a large induced immigration due to labor agents in this country, who, independently or in coöperation with agents in Europe, operate practically without restriction. As a rule only unskilled laborers are induced to come to the United States by this means. . . . Boards of special inquiry are one of the most, if not the most, important factor in the administration of the immigration law. . . . In justice to the immigrant, and to the country as well, the character of these boards should be improved. They should be composed of men whose ability and

raising fit them for the judicial functions performed, and the provision compelling their hearings to be separate and apart from the public should be repealed. . . .

As a result of the investigation the Commission is unanimously of the opinion that in framing legislation emphasis should be laid upon the following principles:

1. Care should be taken that immigration be such both in quality and quantity as not to make too difficult the process of assimilation.
2. Further general legislation concerning the admission of aliens should be based primarily upon economic or business considerations touching the prosperity and economic well-being of our people.
3. The measure of the rational, healthy development of a country is not the extent of its investment of capital, its output of products, or its exports and imports, unless there is a corresponding economic opportunity afforded to the citizen dependent upon employment for his material, mental, and moral development.
4. The development of business may be brought about by means which lower the standard of living of the wage earners. A slow expansion of industry which would permit the adaptation and assimilation of the incoming labor supply is preferable to a very rapid industrial expansion which results in immigration of laborers of low standards and efficiency, who imperil the American standard of wages and conditions of employment.

The Commission agrees that:

1. To protect the United States more effectively against the immigration of criminal and certain other debarred classes
 - (a) Aliens convicted of serious crimes within a period of five years after admission should be deported.
 - (b) Under the provisions of Section 39 of the immigration act of February 20, 1907, the President should appoint commissioners to make arrangements with such countries as

have adequate police records to supply emigrants with copies of such records, and that thereafter immigrants from such countries should be admitted to the United States only upon the production of proper certificates showing an absence of convictions for excludable crimes.

(c) So far as practicable the immigration laws should be so amended as to be applicable to alien seamen.

(d) Any alien who becomes a public charge within three years after his arrival in this country should be subject to deportation in the discretion of the Secretary of Commerce and Labor.

2. Sufficient appropriation should be regularly made to enforce vigorously the provisions of the laws regarding the importation of women for immoral purposes.

3. As the new statute relative to steerage conditions took effect so recently as January 1, 1909, . . . the Commission's only recommendation in this connection is that a statute be immediately enacted providing for the placing of Government officials . . . on vessels carrying third-class or steerage passengers for the enforcement of the law and the protection of the immigrant.

4. To strengthen the certainty of just and humane decisions of doubtful cases at ports of entry it is recommended— That section 25 of the immigration act of 1907 be amended to provide that boards of special inquiry should be appointed by the Secretary of Commerce and Labor, and that they should be composed of men whose ability and training qualify them for the performance of judicial functions; that the provisions compelling their hearings to be separate and apart from the public should be repealed, and that the office of an additional Assistant Secretary of Commerce and Labor to assist in reviewing such appeals be created.

5. To protect the immigrant against exploitation; to discourage sending savings abroad; to encourage permanent residence and naturalization; and to secure better distribution of alien immigrants throughout the country . . .

(a) The States should enact laws strictly regulating immigrant banks.

(b) Proper State legislation should be enacted for the regulation of employment agencies.

(c) Aliens who attempt to persuade immigrants not to become American citizens should be made subject to deportation.

(d) The division of information should be so conducted as to coöperate with States desiring immigrant settlers; and information concerning the opportunities for settlement should be brought to the attention of immigrants in industrial centers who have been here for some time and who might be thus induced to invest their savings in this country and become permanent agricultural settlers.

6. One of the provisions of Section 2 of the act of 1907 reads as follows: 'And provided further, That skilled labor may be imported if labor of like kind unemployed cannot be found in this country.' . . . Under the law the Secretary of Commerce and Labor has no authority to determine the question of the necessity of importing such labor in advance of the importation, and it is recommended that an amendment to the law be adopted by adding to the clause cited above a provision to the effect that the question of the necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Commerce and Labor upon the application of any person interested prior to any action in that direction by such person; such determination by the Secretary of Commerce and Labor to be reached after a full hearing and an investigation into the facts of the case.

8. The investigations of the Commission show an over supply of unskilled labor in basic industries to an extent which indicates an over supply of unskilled labor in the industries of the country as a whole, and therefore demand legislation which will at the present time restrict the further admission of such unskilled labor. It is desirable in making the restriction that . . .

(a) A sufficient number be debarred to produce a marked effect upon the present supply of unskilled labor.

(b) As far as possible the aliens excluded should be those who come to this country with no intention to become American citizens or even to maintain a permanent residence here, but merely to save enough, by the adoption, if necessary, of low standards of living, to return permanently to their home country. Such persons are usually men unaccompanied by wives or children.

(c) As far as possible the aliens excluded should also be those who, by reason of their personal qualities or habits, would least readily be assimilated or would make the least desirable citizens.

The following methods of restricting immigration have been suggested:

(a) The exclusion of those unable to read or write in some language.

(b) The limitation of the number of each race arriving each year to a certain percentage of the average of that race arriving during a given period of years.

(c) The exclusion of unskilled laborers unaccompanied by wives or families.

(d) The limitation of the number of immigrants arriving annually at any port.

(e) The material increase in the amount of money required to be in the possession of the immigrant at the port of arrival.

(f) The material increase of the head tax.

(g) The levy of the head tax so as to make a marked discrimination in favor of men with families.

All these methods would be effective in one way or another in securing restrictions in a greater or less degree. A majority of the Commission favor the reading and writing test as the most feasible single method of restricting undesirable immigration."

These recommendations have been considered at such length due to the fact that until the Commission made its

report all discussions on the subject of immigration were, of necessity, based very largely upon conjecture or the personal observation of individuals, and, far too often, upon prejudice. But in this report we have a fair analysis of the situation. The results of the work of the Commission are evident in the legislation passed since 1914.

The Dillingham-Burnett bill,² which was based upon the report of the Immigration Commission, passed both houses of Congress by overwhelming majorities, but was vetoed by President Taft because it contained the reading or literacy test. The Senate promptly passed the bill over the President's veto by a vote of 72 to 18, but the vote in the House, 213 to 114, lacked by five votes the two-thirds necessary to override the executive's disapproval. The bill was reintroduced in the following Congress in substantially the same form as before and passed the House by 252 to 126, and the Senate by 50 to 7, but President Wilson vetoed it and the House failed to overcome the veto by a narrow margin of four votes less than the required two-thirds, which action ended consideration of the matter, for the House having acted, the veto message did not come before the Senate.

President Wilson vetoed this measure because it contained the literacy test, which seemed to him to be a radical departure from the "traditional" policy of this country. The only question in his mind was that he was not sure that the American people wanted to restrict immigration "by arbitrary tests," and he suggested that the party platforms speak out on the subject.

Yet, since 1896 there had been sixteen recorded votes on bills embodying the literacy test in one form or another in either the House or the Senate and each time the measure passed by more than a majority.³ Three times both the

² Both Senator Dillingham and Representative Burnett were members of the Immigration Commission.

³ In an address in the Senate, March 16, 1896, Senator Lodge advocated a literacy test to restrict immigration. Congressional Record, 54th Congress, 1st session, pp. 2817-20. For a history of the literacy test, see H. P. Fairchild, Quarterly Journal of Economics, XXXI, p. 447. —

Senate and the House together passed bills containing the provision, which thereby put it before the President for his signature or veto and in each case it was a veto.⁴ Out of the 213 members of the House who voted in 1913 to pass the bill over President Taft's veto more than 160 were re-elected. Out of the 252 members of the House who voted in 1914 for the literacy test 185 were returned. The former was a Republican Congress and the latter a Democratic one.

It would seem that these activities of Congress simply reflected a powerful opinion in favor of further restriction of immigration. The platforms of the political parties had already spoken on the subject. In 1896 the Republican Party indorsed the literacy test in direct and specific terms, without equivocation or evasion when it stated: "For the protection of the quality of our American citizenship and of the wages of our working-men against the fatal competition of low-priced labor we demand that the immigration laws be thoroughly enforced and so extended as to exclude from entrance to the United States those who can neither read nor write." The Democratic Party platform of that year stated: "We hold that the most efficient way of protecting American labor is to prevent the importation of foreign pauper labor to compete with it in the home market." In 1912 the Republican platform declared: "We pledge the Republican Party to the enactment of appropriate laws to give relief from the constantly growing evil of induced or undesirable immigration which is inimical to the progress and welfare of the people of the United States."

Undaunted by two defeats, Mr. Burnett again presented the bill at the next session of Congress. Both Houses of Congress again passed it by large majorities, and President Wilson again vetoed the measure. However, the executive opposition could no longer hold in check the demand for further restriction, so the veto was overcome by a vote of

⁴For President Cleveland's veto see U. S. 54th Congress, 2nd Session, Senate Doc. No. 185. For President Taft's veto see U. S. 62nd Congress, 3d Session, Senate Doc. No. 1087. For President Wilson's first veto see U. S. 63d Congress, 3d Session, House Doc. No. 1527.

287 to 106, or 25 more than the required two-thirds, in the House, and by a vote of 62 to 19 in the Senate.

The Immigration Act of February 5, 1917, which is still part of our basic law on immigration, repeals the act of February 20, 1907, the Act of March 3, 1903, and all prior acts or parts of acts inconsistent with the new law.

By Section 1 "the word 'alien' wherever used in this act shall include any person not a native-born or naturalized citizen of the United States; but this definition shall not be held to include Indians of the United States not taxed or citizens of the islands under the jurisdiction of the United States. . . . That the term 'seamen' as used in this act shall include every person signed on the ship's articles and employed in any capacity on board any vessel arriving in the United States from any foreign port or place."

Section 2 states "That there shall be levied, collected, and paid a tax of \$8 for every alien, including alien seamen regularly admitted as provided in this act, entering the United States: Provided, That children under sixteen years of age who accompany their father or their mother shall not be subject to said tax." In the Act of 1907 the tax was \$4 on every alien without reference to age. In making this change in the law Congress adopted the suggestion of the Immigration Commission to adjust the head tax so as to make a marked discrimination in favor of men with families. The other provisions in this section which relate to exemptions, payment, etc., are substantially the same as those in the Act of 1907.⁵

Section 3 enlarges the excluded classes to include "persons of constitutional psychopathic inferiority; persons with chronic alcoholism; vagrants; persons who have come in consequence of advertisements for laborers printed, published, or distributed in a foreign country; contract laborers, . . . whether such offers or promises are true or false . . . ; (and) stowaways, except that any such stowaway, if otherwise admissible, may be admitted in the dis-

⁵ In this discussion we shall note only the changes made by the Act of 1917.

cretion of the Secretary of Labor." The provision concerning the exclusion of anarchists was elaborated as follows: "anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property; persons who are members of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property." The exclusion of "persons likely to become a public charge," was shifted from its position in section 2 of the immigration act of 1907 to a new position in section 3 of this act in order to indicate the intention of Congress that aliens shall be excluded upon said ground for economic as well as other reasons and with a view to overcoming the decision of the Supreme Court in *Gegiow v. Uhl*.⁶ In the Act of 1907 this class appeared between paupers and professional beggars in the list of excluded classes. Immigration officials had begun to consider circumstances not directly connected with the alien in determining whether he was likely to become a public charge if admitted. Under this interpretation persons were excluded because poor economic conditions existed in the locality to which they were destined, or even because of racial feeling against the alien in question, the theory being that if aliens could not get employment there they would necessarily become public charges.

A group of Russian Ossetins, a Caucasus Mountain people, who came to New York, destined to Portland, Oregon, were denied admission as persons likely to become a

⁶ 239 U. S. 3 (1915).

public charge due chiefly to the poor industrial conditions existing in Portland at that time which would surely make it impossible for them to find employment there. The Supreme Court held, however, that aliens could be excluded as "likely to become a public charge" only "on the ground of permanent personal objections accompanying them irrespective of local conditions." The court held that "persons likely to become a public charge" were to be considered as generally similar to and therefore not liable to different treatment than that accorded beggars, paupers, idiots, etc., since they were mentioned with such classes. The court held that the Statute "deals with admission to the United States, not to Portland." It was to overcome this decision of the Supreme Court that the change in the position of this clause was made, although Congress refused to adopt the statement, "persons likely for any reason to become a public charge."⁷

Several other changes were also made in the phraseology of the old law respecting excluded classes. The Act of 1907 excluded "insane persons, and persons who have been insane within five years" and also "persons who have had two or more attacks of insanity at any time previously," while this section simply reads "insane persons (and) persons who have had one or more attacks of insanity at any time previously." It is obvious that this is a more stringent provision with regard to the admission of insane persons, or those liable to become insane, than the former provisions on the subject. The Act of 1907 excluded "polygamists or persons who admit their belief in the practice of polygamy," while this law excludes "polygamists or persons who practice polygamy or believe in or advocate the practice of polygamy." Again, "persons afflicted with tuberculosis" in the former act is made to read "persons afflicted with tuberculosis in any form," in this Act of 1917. The former law excluded "women and girls coming into the United States for the purpose of prostitution or for any

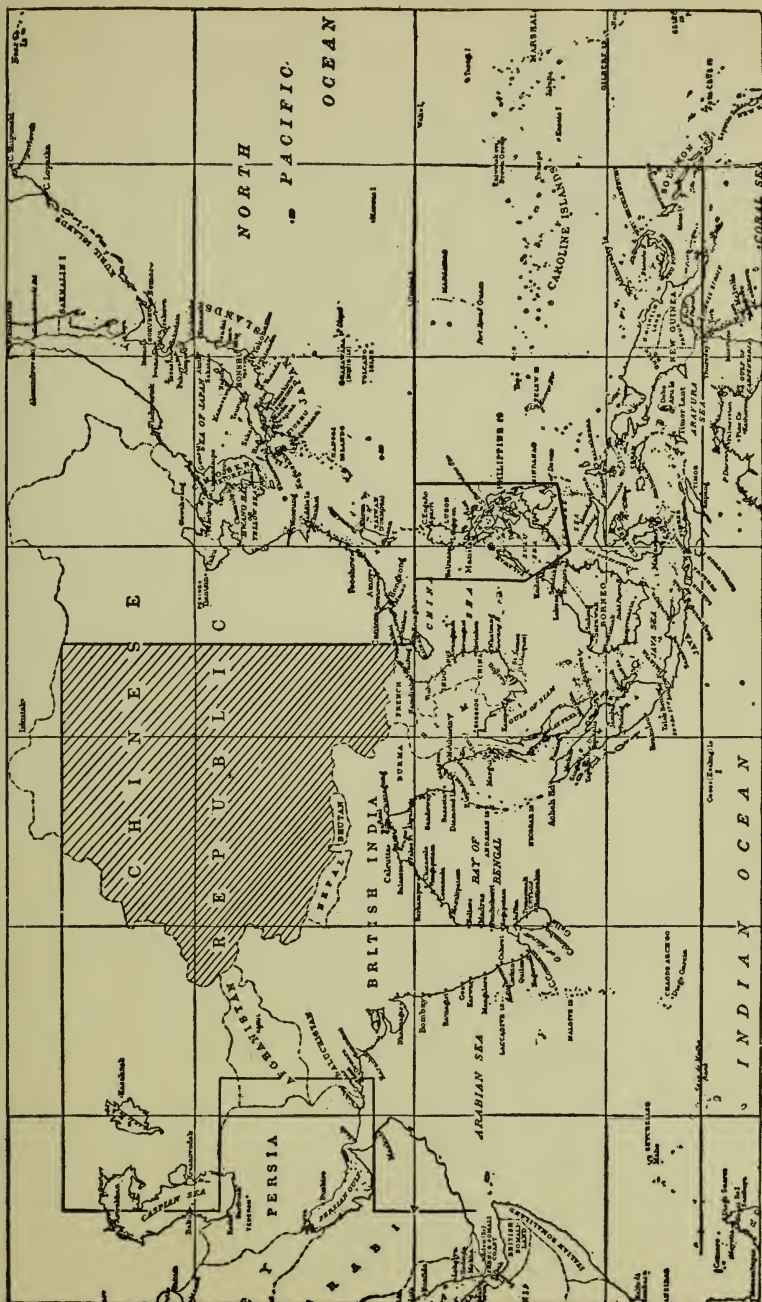
⁷ See *Wallis v. U. S. ex rel. Mannara*, 273 Fed. Rep. 509 (1921) for a more recent definition of "persons likely to become a public charge."

other immoral purpose," while in this act the prohibition applies to all "persons," so that men as well as women and girls are excluded.

The so called latitude and longitude clause—which is indeed an "arbitrary" test, closed the door against virtually all Asiatic immigration not already barred by the Chinese Exclusion Law and Treaty and the "Gentlemen's Agreement" with Japan, which has since been legislated out of existence by the Act of 1924. This clause states: "Unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situated on the continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridian of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be sub-

MAP SHOWING ASIATIC ZONE PRESCRIBED IN SECTION THREE OF IMMIGRATION ACT, THE NATIVES OF WHICH ARE EXCLUDED FROM THE UNITED STATES, WITH CERTAIN EXCEPTIONS.

(Section indicated by diagonal lines covered by treaty and laws relating to Chinese. The Philippine Islands are United States possessions and therefore not included in barred zone.)



ject to deportation as provided in section nineteen of this act."

The countries included within this restricted area are India, Siam, Indo-China, Afghanistan, parts of Russian Turkestan and Arabia on the continent of Asia, and New Guinea, Borneo, Sumatra, and Java as well as many lesser islands. Chinese are excluded by the Chinese Exclusion Law, while the Japanese were exempt until July 1, 1924 under the "Gentlemen's Agreement." This latitude and longitude plan resulted from the objections of the Japanese Government to a clause excluding persons not eligible to American citizenship through naturalization. Every general immigration bill since 1911 included such a clause, but it was always eliminated prior to the Act of 1924. The effect of this latitude and longitude clause has been to cut off any possible immigration of east Indians or Hindus to our Pacific Coast, a result made all the more possible by Canada's drastic policy of exclusion of the same classes.

However, the most important addition to the excluded classes was the one which had caused three Presidential vetoes,—the exclusion of all who can not read under a literacy test. The law stated: "That after three months from the passage of this act, in addition to the aliens who are by law now excluded from admission into the United States, the following persons shall also be excluded from admission thereto, to wit:

All aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish: Provided, That any admissible alien, or any alien heretofore or hereafter legally admitted, or any citizen of the United States, may bring in or send for his father or grandfather over fifty-five years of age, his wife, his mother, his grandmother, or his unmarried or widowed daughter, if otherwise admissible, whether such relative can read or not; and such relative shall be permitted to enter. That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uniform

size, prepared under the direction of the Secretary of Labor, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect. That the following classes of persons shall be exempt from the operation of the literacy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith; all aliens who have been lawfully admitted to the United States and who have resided therein continuously for five years and who return to the United States within six months from the date of their departure therefrom; all aliens in transit through the United States; all aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory."

It is to be noted that this test is so simple it would seem that almost anyone can fit himself to meet it in a short time if he so desires.⁸ In fact, many critics consider the test a big joke. Another weakness or difficulty with it is that it is qualitative and fixed no numerical limit to immigration. In 1922, there were admitted 234,623 immigrants who could read and write; 1,476 who could read but could not write; and 10,743 who could neither read nor write, while only 1,249 were debarred under the literacy test, 384 of whom were Mexicans. In 1923 the number

⁸ Such books as MacLean, *Modern Immigration*, and Jenks and Lauck, *The Immigration Problem*, discuss the relative merits of a literacy test. See especially, Warne, *The Tide of Immigration*, and Fairchild, *The Literacy Test and Its Making*.

admitted who could read and write was 419,189; who could read but could not write, 558; and who could neither read nor write, 11,356. Those debarred numbered 2,095, of whom 602 were Mexicans, 672 Finns and 118 (South) Italians. It is obvious from these figures that no great numerical restriction has been brought about by this provision.⁹ It is impossible to state how many more would come but for this restriction who never leave for the United States knowing they cannot gain admission due to their illiteracy. In 1914 the total immigration was 1,218,480, of which 260,152 or 21.4 percent were illiterates 14 years of age and over, from which figures it would seem that the law does keep many from trying to gain admittance. However, it has great potential value today against at least one particular country against which it would seem we need further restriction. The percentage or quota law does not apply to Mexico. The result is that many Mexican laborers are entering the United States each year to replace the supply of cheap European labor which has been cut off by the quota provisions, some of whom come in in violation of the contract labor law, a practice which is difficult to stop. However, many of them are illiterate and are subject to exclusion under the literacy test. If this provision were properly enforced against these Mexican laborers many of them would thus be excluded. Here seems to be the most important work today to be done under the literacy provision and this gives it great potential value.

Sections 5-7 deal with contract labor, induced immigration and solicitation of immigration by transportation companies. The former law against the importation of labor under contract is amended so as to provide for the exclusion of laborers coming by reason of false, as well as true, promise of employment. The exception to the contract labor law that skilled labor may be imported "if labor of like kind unemployed cannot be found in this country"

⁹ See Annual Reports of the Commissioner-General of Immigration for such annual statistics.

was amended to read in addition, "and the question of necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Labor upon the application of any person interested, such application to be made before such importation, and such determination by the Secretary of Labor to be reached after a full hearing and an investigation into the facts of the case." Under the previous law the necessity could not be determined prior to the arrival of the imported laborers at a United States port. The law added nurses to the exempt professional classes. It also provided that violators of the law concerning contract laborers, induced immigration and solicitation of immigration by steamship companies, etc., "shall be subject to either the civil or the criminal prosecution, or both, prescribed by section five of this act," which made violators subject to a fine of \$1,000 and imprisonment for a term of not less than six months nor more than two years. Even more important is the authority given to the Secretary of Labor to impose an administrative fine of \$400 "for each and every such violation," and "whenever it shall be shown to the satisfaction of the Secretary of Labor that the provisions of this section are persistently violated by or on behalf of any transportation company, it shall be the duty of said Secretary to deny to such company the privilege of landing alien immigrant passengers of any or all classes at United States ports for such a period as in his judgment may be necessary to insure an observance of such provisions" against the stimulation of immigration by such transportation companies.

Section 11a provided for the placing of Government officials, both men and women, on board ships bringing immigrants to the United States, the purpose stated being the enforcement of the law and the protection of the immigrants. The law stated: "When such inspectors and matrons are detailed for said duty they shall remain in that part of the vessel where immigrant passengers are carried; and it shall be their duty to observe such passengers during the voyage and report to the immigration

authorities in charge at the port of landing any information of value in determining the admissibility of such passengers that may have become known to them during the voyage." This provision resulted from one of the recommendations of the Immigration Commission, which was prompted by the findings of the agents of the Commission who traveled in the guise of immigrants in the steerage of a number of trans-Atlantic ships and both observed and experienced the hardships and indignities to which immigrants were subjected on some of the lines.

Section 12 added a number of topics to the manifests concerning which information must be given for immigrants entering and departing from the United States and for citizens of the United States "departing who do not intend to reside permanently in a foreign country."

Section 16 expands the details concerning the physical and mental examination of all arriving aliens, among which provisions we find that "immigration inspectors are hereby authorized and empowered to board and search for aliens any vessel, railway car, or any other conveyance, or vehicle in which they believe aliens are being brought into the United States." . . . "All aliens coming to the United States shall be required to state under oath the purposes for which they come, the length of time they intend to remain in the United States, whether or not they intend to abide in the United States permanently and become citizens thereof, and such other items of information regarding themselves as will aid the immigration officials in determining whether they belong to any of the excluded classes enumerated in section three hereof."

In Section 17 it was provided that all hearings before the boards of special inquiry shall be separate and apart from the public, "but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Secretary of Labor."

Section 19 makes a radical change in the policy of the government concerning the deportation of aliens on account of crimes committed after landing in the United States.

Previous to this there were no provisions concerning deportation except in the cases of prostitution and related offenses. The law states: "That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States;¹⁰ any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude,¹¹ committed at any time after entry . . . shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: Provided, That the marriage to an American citizen¹² of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act."

¹⁰ The latter part of this provision relates to Chinese entering or found in the United States in violation of the Chinese Exclusion Laws.

¹¹ This provision has proved highly unsatisfactory due to its vague meaning.

¹² This provision is now rendered superfluous by the Act of Sept. 22, 1922, since the foreign woman does not now acquire American citizenship *ipso facto* by marriage to an American citizen. See article by C. D. Hill, "Citizenship of Married Women," *Amer. Jour. of International Law*, Vol. 18, pp. 720-736 (1924). Also see *infra*, pp. 176-177.

Deportation is not to be made if a criminal is pardoned or if the court imposing sentence makes a recommendation that deportation shall not be made. The proviso quoted above is another important addition to the law respecting the immoral classes. The law was also strengthened against such classes when the former wording "women and girls coming into the United States for the purpose of prostitution, etc.," was changed to "persons."

Sections 31-36 undertake to close up an avenue through which many aliens were illegally entering the United States. Section 31 provides "That any person, including the owner, agent, consignee, or master of any vessel arriving in the United States from any foreign port or place, who shall knowingly sign on the ship's articles, or bring to the United States as one of the crew of such vessel, any alien, with intent to permit such alien to land in the United States in violation of the laws and treaties of the United States regulating the immigration of aliens, or who shall falsely and knowingly represent to the immigration authorities at the port of arrival that any such alien is a bona fide member of the crew, shall be liable to a penalty not exceeding \$5,000."

Section 32 provides that "no alien excluded from admission into the United States. . . . and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States." The master, owner, agent or consignee is subject to a fine of \$1,000 if he fails to detain any such alien on board.

Section 33 declares "That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: Pro-

vided, That in case any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible . . . from remaining permanently in the United States."

Section 34 states "That any alien seaman who shall land in a port of the United States contrary to the provisions of this act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported."

Sections 35 and 36 provide further restrictions to control the problem arising from the illegal entrance of aliens as seamen. The latter section requires a list containing among other information, the names of all aliens employed on all vessels coming into and departing from any port in the United States.

The Act of 1917 makes a far wider use of the administrative fine than the former laws. It also increases it from \$100 to \$200. This fine or penalty, which is imposed by the Secretary of Labor on steamship companies, etc., is a very important factor in preventing such companies from bringing excluded persons to the United States. This act also imposes another heavy penalty in all cases which are subject to an administrative fine, for it provides that in addition to the regular penalty, the steamship company concerned shall be assessed an amount equal to that paid by each alien of the classes named for his transportation from the initial point of his departure for the United States, which amount is to be paid to the debarred alien by a United States official.

Section 38 provided that the Act should go into effect on and after May 1, 1917, except the literacy test, which be-

came operative on May 5, 1917. Such then are the important additions made to our immigration laws by the Act of 1917. In excluding illiterates, Asiatics and aliens entering illegally as seamen, in addition to the exclusion of other new classes, together with strengthening provisions for the exclusion of certain classes already prohibited, the law was made more stringent than ever before.

An act of December 26, 1920 which provided "for the treatment in hospitals of diseased alien seamen," placed all expenses connected therewith upon the owner, agent, consignee, or master of the vessel and stated that such expenses are not to be deducted from the seaman's wages.

An Act approved October 16, 1918 as amended by the Act approved June 5, 1920, which was "An act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes," provided: "That the following aliens shall be excluded from admission into the United States:

(a) Aliens who are anarchists;

(b) Aliens who advise, advocate, or teach, or who are members of or affiliated with any organization, association, society or group, that advises, advocates, or teaches, opposition to all organized governments;

(c) Aliens who believe in, advise, advocate, or teach, or who are members of, or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or (3) the unlawful damage, injury, or destruction of property, or (4) Sabotage;¹³

¹³ See *United States ex rel. Diamond v. Uhl*, 266 Federal Reporter 35 (1920) for a case involving the advocacy of assassination and of unlawful

(d) Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching opposition to all organized government, or advising, advocating, or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the Government of the United States or of any other organized government, or (3) the unlawful damage, injury, or destruction of property, or (4) Sabotage;

(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character in subdivision (d).

For the purpose of this section: (1) the giving, loaning, or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith."

Section 2 provides that "the provisions of this section shall be applicable to the classes of aliens mentioned in this act irrespective of the time of their entry into the United States," and it provides for the deportation of such.

Section 3 declared it to be a felony for any alien to enter or attempt to enter the United States after once being

destruction of property during a strike. The court affirmed the order of deportation.

excluded, subject to imprisonment for not more than five years and to deportation again.

The details of this law have been given in full for a two-fold purpose: first, the law goes about as far as it is possible to go in providing for the exclusion of radical aliens. Under it, our country could be purged of every such alien if the law were properly enforced; and second, to indicate clearly that there is a law for such deportations. Just after the passage of this act, many protests were voiced against the deportations then being made.¹⁴

A joint resolution authorizing the readmission to the United States of certain aliens who had been conscripted or had volunteered for service with the military forces of the United States or cobelligerent forces was approved October 19, 1918. Its provision permitting the readmission of these aliens, who would otherwise be excluded, "if it is proved that the disability was acquired while the alien was serving in the military or naval forces of the United States or of any one of the nations cobelligerent of the United States," was proper and was designed to prevent obvious injustice to such persons.¹⁵

The Act of May 10, 1920 provides further for the deportation of certain undesirable aliens and denies readmission to those deported, who violate certain acts of the United States which are designated in this act. The Act of June 5, 1920 providing for the admission of certain female aliens stated: "That an alien who cannot read may, if otherwise admissible, be admitted if, within five years after this act becomes law, a citizen of the United States who has served in the military or naval forces of the United States during the war with the Imperial German Government,

¹⁴ As to what constitutes a "fair hearing" see Whitfield, *Immigrant Inspector, et al. v. Hanges et al.*, 222 Federal Reporter 745 (1915). As to the finality of decisions by Immigration Authorities see *U. S. ex rel. Barlin v. Rodgers*, 191 Federal Reporter 973 (1911). For protests against such deportations, see Chafee, *Freedom of Speech* (1920); Panunzio, C. M., *The Deportation Cases of 1919-1920* (1921); Post, L. F., *The Deportation Delirium of 1920* (1923); "Investigation of L. F. Post on Deportations," House Committee on Rules, 66th Cong., 2d Ses., on H. R. 522; Stephenson, G. M., *History of American Immigration*, Ch. XIV (1926).

¹⁵ Also see Act of May 26, 1926, *infra*, p. 172, note 3.

requests that such alien be admitted, and with the approval of the Secretary of Labor, marries such alien at a United States Immigration station."

Such then were the various restrictions on immigration in existence in the United States prior to the Quota Act of May 19, 1921, as amended by the Act of May 11, 1922. It is worth while to note again, that since the beginning of Federal legislation bar after bar has been put up, restriction after restriction has been created—with not a single step backward. Yet all of these restrictions so far have been qualitative. Before 1910 it was evident that some numerical restrictions would be necessary to stem the ever-swelling tide, in addition to the existing qualitative restrictions. Action was delayed, however, until the Immigration Commission could report and then before any legislation could be passed, the World War suddenly and virtually stopped all immigration to the United States. Yet that very war, in the long run, necessitated some plan for numerical restriction to an even greater extent than was the case prior to 1914. In the next two chapters we shall analyze first the emergency legislation that was enacted, and then the Act of 1924, in each of which was incorporated a plan for numerical restriction.

CHAPTER VI

THE EMERGENCY QUOTA LEGISLATION, 1921-1924

PURPOSE of the Act of May 19, 1921—Provisions of the act—The first year of its operation—Problems created by it—Its life extended for two years by the Act of May 11, 1922—The second year under the law—The third year under the law—Effects on the old and new immigration—Net immigration into the United States—Immigration by races or peoples—English-speaking immigrants—Conclusion.

The immigration act of May 19, 1921 was passed as a makeshift, temporary, emergency measure to stem the tide of those unfortunates of Europe who desired to come into this so-called "Land of Promise," in order to escape the misery and burdens which they inherited from the war. 805,228 had already come in the preceding year and millions were preparing to depart from their native lands.¹ It was evident that fully two millions would be willing and able to come each year for several years against which the literacy and other tests would afford only a frail barrier. Here was an emergency. There was little or no time for an intelligent and historical study of the question. It would take several years to do that; but in the meantime drastic numerical or quantitative restrictions were necessary. The quota act of May 19, 1921, whose life was extended by the act of May 11, 1922 to July 1, 1924 provided for a quantitative limitation, which thereby gave Congress the opportunity to work out a more permanent plan for numerical restriction.

Section 2(a) provided, "That the number of aliens of any nationality² who may be admitted under the immigra-

¹ This statement is based on various reports made by government officials, including those of the Commissioner-General of Immigration. In an address before the Chicago Association of Commerce, June 1, 1927, Senator Reed of Pennsylvania stated that there are now more than 1,500,000 foreigners seeking to enter the United States; this number having already filed applications at our consulates abroad.

² See article by Dickinson, E. D., "The Meaning of Nationality in the Recent Immigration Acts," *American Journal of International Law*, Vol. 19 (1925), pp. 344-347.

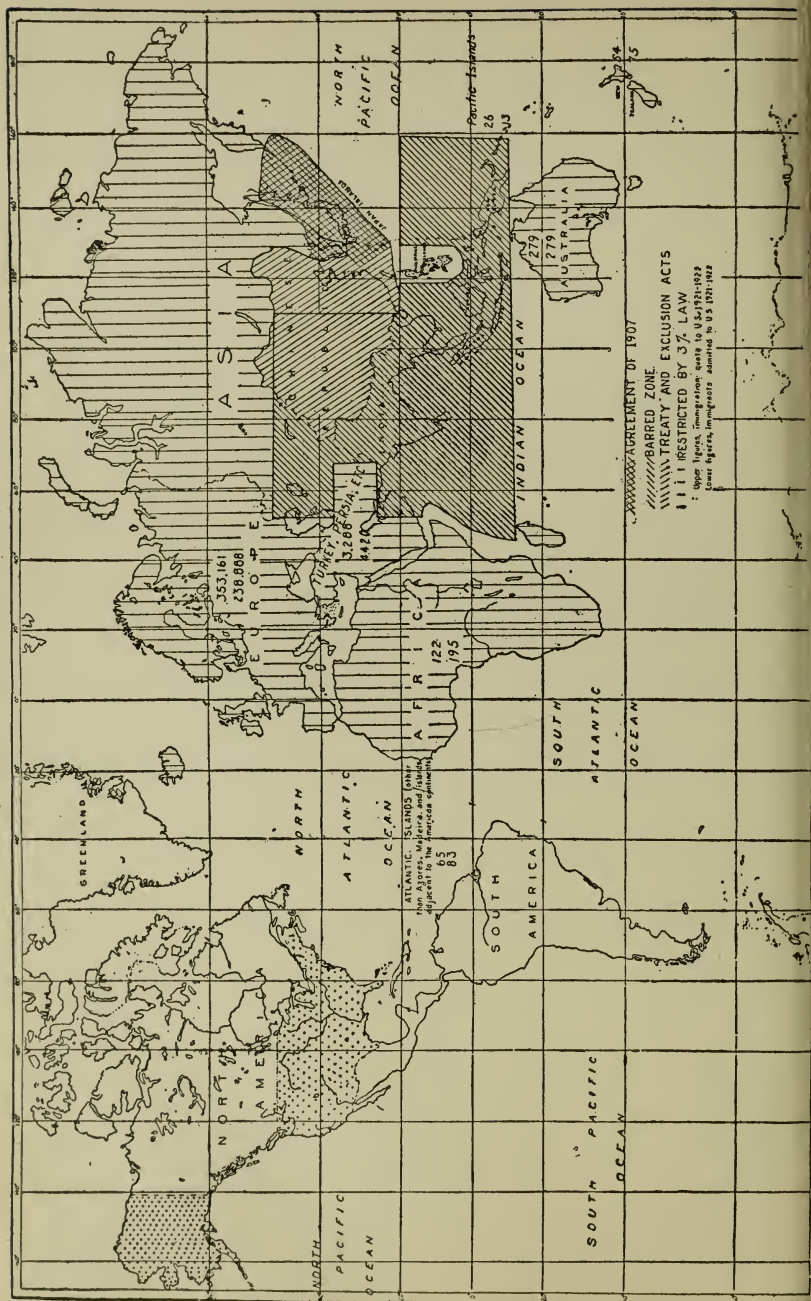
tion laws to the United States in any fiscal year shall be limited to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910. This provision shall not apply to the following, and they shall not be counted in reckoning any of the percentage limits provided in this act: (1) Government officials, their families, attendants, servants, and employees; (2) aliens in continuous transit through the United States; (3) aliens lawfully admitted to the United States who later go in transit from one part of the United States to another through foreign contiguous territory; (4) aliens visiting the United States as tourists or temporarily for business or pleasure; (5) aliens from countries immigration from which is regulated in accordance with treaties or agreements relating solely to immigration; (6) aliens from the so-called Asiatic barred zone, as described in section three of the Immigration Act; (7) aliens who have resided continuously for at least five years immediately preceding the time of their application for admission to the United States in the Dominion of Canada, Newfoundland, the Republic of Cuba, the Republic of Mexico, countries of Central and South America, or adjacent islands; or (8) aliens under the age of eighteen who are children of citizens of the United States."

"(b) For the purpose of this Act nationality shall be determined by country of birth. . . ."

(c) This subdivision provided the manner in which the law was to be put into operation and how conditions resulting from changed boundaries were to be dealt with.

"(d) When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded; Provided, That the number of aliens of any nationality who may be admitted in any month shall not exceed 20 per centum of the total number of aliens of such nationality who are admissible in that fiscal year: Provided

MAP OF WORLD
Showing
Immigration restricted areas 1921-1922



further, That aliens returning from a temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants, may, if otherwise admissible, be admitted notwithstanding the maximum number of aliens of the same nationality admissible in the same month or fiscal year, as the case may be, shall have entered the United States; but aliens of the classes included in this proviso who enter the United States before such maximum number shall have entered shall (unless excluded by subdivision (a) from being counted) be counted in reckoning the percentage limits provided in this Act: Provided further, That in the enforcement of this Act preference shall be given so far as possible to the wives, parents, brothers, sisters, children under eighteen years of age, and fiancées, (1) of citizens of the United States, (2) of aliens now in the United States who have applied for citizenship in the manner provided by law, or (3) of persons eligible to United States citizenship who served in the military or naval forces of the United States at any time between April 6, 1917, and November 11, 1918, both dates inclusive, and have been separated from such forces under honorable conditions."

Section 3 provided for the publication by the Commissioner-General of Immigration of a statement showing the annual and monthly quotas of each nation, and "when 75 per centum of the maximum number of any nationality admissible during the fiscal year shall have been admitted such statements shall be issued weekly thereafter."

Section 4 stated "That the provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws."

Section 6 provided that it shall be unlawful for any person to bring into the United States any alien not admissible under the terms of this Act or regulations made thereunder, subject to a fine of \$200 for each alien so brought, "and in addition a sum equal to that paid by such alien

for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs to the alien on whose account assessed." The original act imposed no penalty for its excess of quota, the above penalties being provided by the joint resolution approved May 11, 1922, and it is certain that a considerable part of the difficulties which arose during the first year of the law's history would have been avoided had violations of the law resulted in monetary loss to the carriers concerned.

Under the original act aliens were exempt from the quota provisions after one year's residence in a country of the New World, but as amended a five year's residence was required, due to the fact that several thousand Europeans, who because of quota limitations and other obstacles could not come to the United States, emigrated to Cuba, Mexico, and South America with the obvious intention of coming here at the expiration of one year. The law, however, did not prohibit the entrance of such aliens within five years but only provided that they should be subject to the quota and other immigration laws if they applied for admission within that period.

In effect the law applied only to immigration from Europe, Siberia, Persia, Africa, Australia, New Zealand, the territory formerly comprising Asiatic Turkey, and certain islands in the Atlantic and Pacific Oceans, which is also true of the present quota law.

The statistical record of operations under the quota law for the fiscal year ended June 30, 1922, is shown in the table on page 147.

During the fiscal year 1921-1922, there were 309,556 immigrant aliens admitted, being less than the number for the fiscal year 1921 by 495,672. During this same period 122,949 non-immigrant aliens, viz., those not coming for permanent residence, entered, as compared with 172,935 the year previous,—a decrease of 49,986. During the year 13,731 aliens were rejected for all causes, a decrease from the preceding year of only 48, and 4,345 were arrested after

TABLE 1³.—IMMIGRATION OF ALIENS INTO THE UNITED STATES UNDER THE PER CENTUM LIMIT ACT OF MAY 19, 1921, DURING THE FISCAL YEAR 1921-22

Country or place of birth.	Total admissible during fiscal year 1921-22	Number admitted and charged to quota during the fiscal year 1921-22	Per cent of quota admitted
Albania	288	280	97
Austria	7,451	4,797	64.4
Belgium	1,563	1,581	101.2
Bulgaria	302	301	99.6
Czechoslovakia	14,282	14,248	99.8
Danzig	301	85	28.2
Denmark	5,694	3,284	57.6
Finland	3,921	3,038	77.5
Fiume	71	18	25.3
France	5,729	4,343	75.9
Germany	68,059	19,053	28
Greece	3,294	3,447	104.7
Hungary	5,638	6,035	107.2
Italy	42,057	42,149	100.2
Luxemburg	92	93	101.1
Netherlands	3,607	2,408	66.8
Norway	12,202	5,941	48.7
Poland (including eastern Galicia)	25,827	26,129	101.1
Portugal (including Azores and Madeira Islands)	2,520	2,486	98.6
Rumania	7,419	7,429	100.1
Russia (including Siberia)	34,284	28,908	84.4
Spain	912	888	97.4
Sweden	20,042	8,766	43.8
Switzerland	3,752	3,723	99.2
United Kingdom	77,342	42,670	55.2
Yugoslavia	6,426	6,644	103.5
Other Europe (including Andorra, Gibraltar, Liechtenstein, Malta, Memel, Monaco, San Marino, and Iceland)	86	144	167.4
Armenia	1,589	1,574	99
Palestine	56	214	382.1
Syria	906	1,008	111.2
Turkey (Europe and Asia, including Smyrna District)	656	1,096	166.9
Other Asia (including Persia, Rhodes, Cyprus, and territory other than Siberia, which is not included in the Asiatic barred zone. Persons born in Siberia are included in the Russia quota)	81	528	651.9

³ All tables in this chapter are taken from annual reports of the Commissioner-General of Immigration to the Secretary of Labor.

TABLE 1.—IMMIGRATION OF ALIENS INTO THE UNITED STATES UNDER THE PER CENTUM LIMIT ACT OF MAY 19, 1921, DURING THE FISCAL YEAR 1921-22.—(Continued.)

Country or place of birth	Total admissible during fiscal year 1921-22	Number admitted and charged to quota during the fiscal year 1921-22	Per cent of quota admitted
Africa	122	195	159.8
Australia	279	279	100
New Zealand	54	75	138.9
Atlantic islands (other than Azores, Madeira, and islands adjacent to the American continents)	65	83	127.7
Pacific islands (other than New Zealand and islands adjacent to the American continents)	26	13	50
Total	356,995	243,953	68.3

entry and deported, as compared with 4,517 in the fiscal year 1921.

The marked decline in immigration for the year 1921-1922 must undoubtedly be attributed to the operation of the Act of May 19, 1921. The admissions in excess of quotas, shown in the above table, the total number being 2,508, represented a theoretically temporary disposition of cases in which absolute and immediate rejection would have inflicted great hardship on innocent immigrants. Reference to the sources of the principal excesses—Other Asia; Turkey, Hungary, Poland, and Yugoslavia—is probably sufficient to explain and also to justify the action taken by the officials in exercising leniency in these cases. Nearly all of the excess admissions occurred during the first six months of the fiscal year, before the seriousness of the law had been fully realized. The arrival of these aliens after their respective quotas were exhausted represents in part the eagerness of the aliens themselves to get in before the gates were closed, and in part the efforts of competing steamship lines to carry as much as possible of the

A MAP OF EUROPE showing Political Divisions and Immigration Districts 1921-1922



limited immigrant business of the year. The latter seems to have been by far the more important factor, for it was inevitable that the alien steamship companies would try to do everything possible to nullify the law for selfish purposes. The President wrote on September 9, 1921, "I haven't any doubt in the world but the enforcement of the immigration laws is working many a hardship." During these early months of adjustment to numerical restrictions, both Congress and the officials proved that they were not so inhumane as some would have us believe. Congress passed resolutions granting relief in several cases. The last group admission in these excess cases occurred under a departmental order of December 23, 1921, known as the Christmas order, which saved upward of 1,000 immigrants from immediate deportation. Following this a more rigid application of the law was inaugurated and a considerable number of aliens were rejected and deported, with the result that comparatively few excess-quota cases arose during the latter months of the fiscal year.

The administration of the quota law during its initial year developed many problems, and, especially during the first six months of its operation, greatly overtaxed the machinery of the service and particularly the facilities at Ellis Island, but on the other hand this per centum law accomplished the purpose for which it was obviously enacted with a degree of success which few anticipated, for according to a careful estimate it kept from our shores 1,750,000 to 2,000,000 immigrants, few of whom we would have been prepared to receive and care for in a year of unemployment and readjustment.

A glance at the foregoing table will clearly show that while the countries of southern and eastern Europe, including Asiatic Turkey and the new nations created out of Turkish territory since the World War, in the main exhausted, and in several instances exceeded, the quotas allotted to them, the opposite was true of nearly all of the countries of northern and western Europe, which, for the purpose of this discussion, include the British Islands,

Scandinavia, Germany, Belgium, Netherlands, Switzerland, and France. The status of these two areas, as well as that of all other countries which are within the scope of the quota law, is shown in the table which follows:

TABLE 2.—IMMIGRATION OF ALIENS INTO THE UNITED STATES UNDER THE PER CENTUM LIMIT ACT OF MAY 19, 1921, DURING THE FISCAL YEAR 1921-22, BY SPECIFIED AREAS

Area	Total number admissible during fiscal year 1921-22	Number admitted and charged to quota during the fiscal year 1921-22	Per cent of quota admitted
Northern and western Europe.....	198,082	91,862	46.4
Southern and eastern Europe and Asiatic Turkish territory.....	158,200	150,774	95.3
Other	713	1,317	184.7

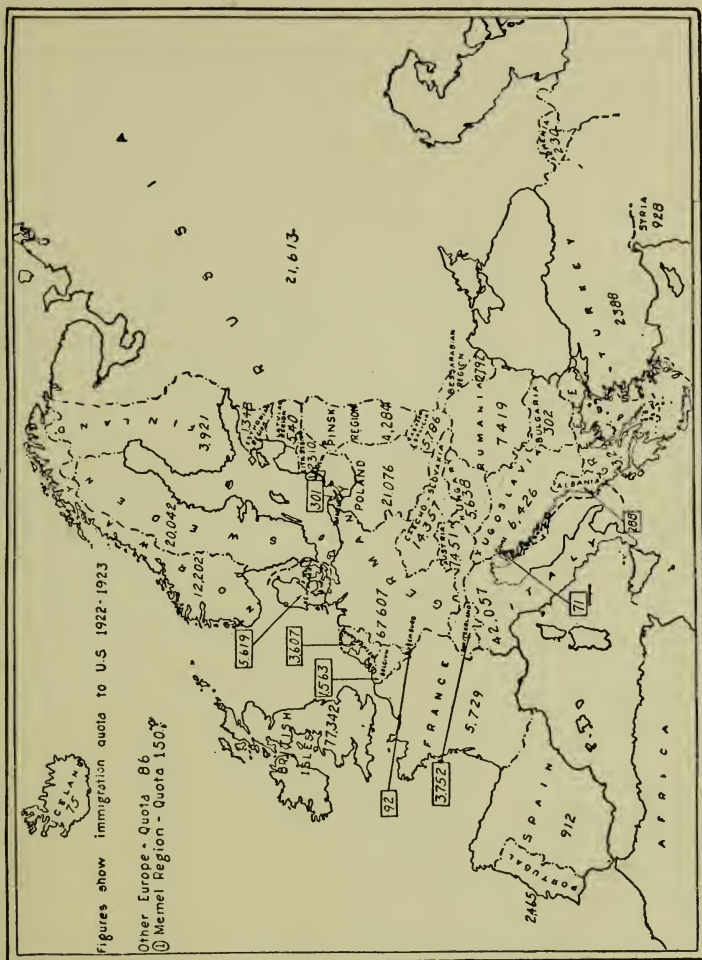
This table needs little comment, but it is interesting to note that the older sources of immigration, in northern and western Europe, exhausted less than one-half of their quotas during the fiscal year, while on the other hand Russia was the only country of southern and eastern Europe for which any considerable part of a quota remained on June 30. In other words, the movement of the year from the older sources was apparently a perfectly normal one, although considerably smaller than it was prior to the World War, but it is impossible to say how many aliens would have come from southern and eastern Europe and Turkey had it not been for the limitation afforded by the per centum limit act. Reference to Table 1 will show that the large percentage of the excess admissions coming from "Other sources" is in the main due to the influx from "Other Asia," 528 being admitted from this source temporarily and otherwise, whereas the total quota for the year was only 81. It may be explained that the excess in this instance was for the most part attributable to the coming of the groups of so-called Assyrian refugees, who were

forced to take refuge in Mesopotamia after fleeing from their homes in Persia during the war and who later applied for admission at various Atlantic and Pacific ports.

When the quota law, which, as before stated, expired by limitation on June 30, 1922, was extended for two years certain changes which had occurred during the year necessitated some revision of the basic population of various countries. Germany's quota was somewhat reduced and Poland's correspondingly increased through the partition of Upper Silesia. Separate quotas were established for areas known as Esthonia, Lithuania, Latvia, and Bessarabia, all of which territory was included with Russia in the quota allotment of 1921-22. A separate quota was given to Russian Armenia, and Turkish Armenia and the Smyrna region were merged with Turkey. Iceland and the Memel region, which were included with "Other Europe" were given separate quota allotments. The quotas of New Zealand and Pacific Islands were merged and other minor changes made.

The fiscal year ended June 30, 1923 was the second complete year during which the quota limit act of May 19, 1921 was in operation. The number of immigrants admitted reached a total of 522,919 during the year, compared to 309,556 such admissions in the fiscal year 1922, an increase of 213,363. This gain was almost entirely due to increased immigration from British North America and Mexico, which countries were and still are not within the scope of the quota provisions, and to the fact that natives of north and west European countries used 90 per cent of their allotted quotas in the year 1922-23, compared with only 46.4 per cent in the preceding fiscal year. During the year 1923 there were 335,480 aliens charged to the quota, leaving 187,439 to enter otherwise. Of the latter, 117,011 were admitted from Canada, 63,768 from Mexico, 13,181 from the West Indies, and smaller numbers from other sources, only a minor part of such immigration being subject to the provisions of the quota law.

B MAP OF EUROPE showing Political Divisions and Immigration Districts 1922-1923



The following table shows the operation of the quota law during the two fiscal years ended June 30, 1922 and 1923:

TABLE 3.—IMMIGRATION QUOTAS ALLOTTED TO SPECIFIED COUNTRIES OR REGIONS OF BIRTH AND THE NUMBER OF ALIENS ADMITTED AND CHARGED AGAINST SUCH QUOTA ALLOTMENTS, FISCAL YEARS ENDED JUNE 30, 1922 AND 1923

Country or region of birth	1923		1922		Per cent of quota admitted	
	Quota	Number admitted	Quota	Number admitted	1923	1922
Albania	288	288	288	280	100.0	97.0
Armenia .....	....	....	1,589	1,574	....	99.0
Austria (Russian)	230	230	....	....	100.0	....
Austria	7,451	7,358	7,451	4,797	98.8	64.4
Belgium	1,563	1,563	1,563	1,581	100.0	101.2
Bulgaria	302	295	302	301	97.7	99.6
Czechoslovakia	14,357	14,357	14,282	14,248	100.0	99.8
Danzig, Free City of	301	263	301	85	80.5	28.2
Denmark	5,619	5,226	5,694	3,284	93.0	57.6
Finland	3,921	3,921	3,921	3,038	100.0	77.5
Fiume, Free State of	71	67	71	18	94.4	25.3
France	5,729	5,034	5,729	4,343	87.9	75.9
Germany	67,607	49,258	68,059	19,053	73.0	28.0
Greece	3,294	3,294	3,294	3,447	100.0	104.7
Hungary	5,638	5,638	5,638	6,035	100.0	107.2
Iceland	75	59	....	....	78.6	....
Italy	42,057	42,057	42,057	42,149	100.0	100.2
Luxemburg	92	92	92	93	100.0	101.1
Netherlands	3,607	3,607	3,607	2,408	100.0	66.8
Norway	12,202	12,202	12,202	5,941	100.0	48.7
Poland (including Eastern Galicia)	31,146	29,730	25,827	26,129	95.5	101.1
Portugal (including Azores and Madeira Islands)	2,465	2,465	2,520	2,486	100.0	98.6
Rumania	7,419	7,419	7,419	7,429	100	100.1
Russia (including Siberia)	24,405	24,405	34,284	28,908	100	84.4
Esthonian region	1,348	241	....	....	17.9	....
Latvian region	1,540	1,513	....	....	98.3	....
Lithuanian and Memel regions	2,460	2,460	....	....	100	....
Spain	912	912	912	888	100	97.4
Sweden	20,042	19,867	20,042	8,766	99.1	43.8
Switzerland	3,752	3,752	3,752	3,723	100	99.2
United Kingdom	77,342	77,342	77,342	42,670	100	55.2
Yugoslavia	6,426	6,426	6,426	6,644	100	103.5
Other Europe (including Andorra, Gibraltar, Liechtenstein, Malta, Monaco, and San Marino; and Memel and Iceland for 1922)	86	86	86	144	100	167.4
Palestine	57	57	56	214	100	382.1
Syria	928	928	906	1,008	100	166.9
Turkey (European and Asiatic, including Smyrna region; and Turkish-Armenian region for 1923)	2,388	2,388	656	1,096	100	111.2
Other Asia (including Cyprus, Hedjaz, Iraq (Mesopotamia, Persia, Rhodes, and any other Asiatic territory not included in the barred zone. Persons born in Asiatic Russia are included in the Russia quota)	81	81	81	528	100	651.9
Africa	122	122	122	195	100	159.8
Australia	279	279	279	279	100	100
New Zealand and Pacific Islands	80	80	80	88	100	110
Atlantic islands (other than Azores) .....	....	....	....	....	....	....
Canary Islands, Madeira, and islands adjacent to the American continents	121	118	65	83	97.5	127.7
Total	357,803	335,480	356,995	243,953	93.8	68.3

The real significance of the data shown in the foregoing compilation will be more readily comprehended by a study of the following table in which are compared the quota allotments of, and the number of aliens admitted from, northern and western Europe; southern and Eastern Europe, including Asiatic Turkey and "Other Asia," and certain other sources subject to the quota law, during the two fiscal years under consideration:

TABLE 4.—IMMIGRATION QUOTAS ALLOTTED TO SPECIFIED AREAS, AND THE NUMBER OF ALIENS ADMITTED AND CHARGED AGAINST SUCH QUOTA ALLOTMENTS, FISCAL YEARS ENDED JUNE 30, 1922 AND 1923

Areas	1923		1922		Per cent of quota admitted	
	Quota	No. admitted	Quota	No. admitted	1923	1922
Northern and western Europe	197,555	177,943	198,082	91,862	90.	46.4
Southern and eastern Europe, including Asiatic Turkey and other Asia	159,646	156,938	158,367	151,446	98.3	95.6
Africa, Australia, New Zealand and other Pacific islands, and Atlantic islands	602	599	546	645	99.5	118.1
Total.....	357,803	335,480	356,995	243,953	93.8	68.3

The chief significance of the foregoing figures lies in the fact that while in the fiscal year 1922 only 46.4 per cent of the combined quotas of northern and western European countries were exhausted, 90 per cent of the total allotment was utilized in the fiscal year 1923, the increase in numbers being from 91,862 in 1921-22 to 177,943 in 1922-23. Table 3 shows that the quotas of the United Kingdom, Sweden, Norway, Denmark, Belgium, Netherlands, and Switzerland were either completely or practically exhausted, the German quota being the only one of this group which reached the end of the fiscal year with any considerable

balance. This was contrary to the arguments of the opponents of the quota law, who, prior to this, contended that the immigrants from Northern and Western Europe would not exhaust their quotas.

On the other hand the quotas of the southern and eastern European and Near East group were substantially exhausted in both years, the small increase in 1922-23 being due to the fact that more favorable conditions surrounding the immigration of natives of Russia made possible the coming of increased numbers of that nationality.

Due to the fact that 20 per cent of a quota allotment could be admitted in any month, several of the nationalities concerned completely exhausted their quotas for the fiscal year 1923 in November. This experience amply justified the wisdom of fixing a monthly limit and indicated the necessity for making the monthly quota smaller. Fortunately, however, for the Immigration Service some of the larger quotas were better distributed, not being exhausted until April or May. New problems arose during the year and already existing problems were in some cases intensified particularly that of preventing illegal entries over the land boundaries and at seaports. However, restriction of immigration by means of a quota system had vindicated itself by this time, and it was already evident that the plan would be a good one if a proper basis for the quota scheme could be worked out, together with amendments to eliminate certain administrative difficulties.

With three exceptions the quotas of all countries and places included in the quota area were entirely exhausted during the fiscal year 1923-24, the three referred to, with the balance remaining in their respective quotas on June 30, being Esthonia 124; Free State of Fiume, 5; and Iceland, 32. The complete record of quota transactions during the three fiscal years 1922-24, is shown in the following table:

TABLE 5.—IMMIGRATION QUOTAS ALLOTTED TO SPECIFIED COUNTRIES OR REGIONS OF BIRTH, AND THE NUMBER OF ALIENS ADMITTED AND CHARGED AGAINST SUCH QUOTA ALLOTMENTS, FISCAL YEARS ENDED JUNE 30, 1922, 1923, AND 1924

Country or region of birth	Year ended June 30, 1924		Year ended June 30, 1923		Year ended June 30, 1922	
	Quota	Number admitted	Quota	Number admitted	Quota	Number admitted
Albania	288	288	288	288	288	280
Armenia (Russian)	230	230	230	230	1,589	* 1,574
Austria	7,342	7,342	7,451	7,358	7,451	4,797
Belgium	1,563	1,563	1,563	1,563	1,563	1,581
Bulgaria	302	302	302	295	302	301
Czechoslovakia	14,357	14,357	14,357	14,357	14,282	14,248
Danzig, Free City of	301	301	301	263	301	85
Denmark	5,619	5,619	5,619	5,226	5,694	3,284
Estonia	1,348	1,224	1,348	241	....	†
Finland	3,921	3,921	3,921	3,921	3,921	3,038
Fiume, Free State of	71	66	71	67	71	18
France	5,729	5,729	5,729	5,034	5,729	4,343
Germany	67,607	67,607	67,607	49,258	68,059	19,053
Great Britain, Ireland	77,342	77,342	77,342	77,342	77,342	42,670
Greece	3,063	3,063	3,294	3,294	3,294	3,447
Hungary (including Sopron District) ..	5,747	5,747	5,638	5,638	5,638	6,035
Iceland	75	43	75	59	....	†
Italy	42,057	42,057	42,057	42,057	42,057	42,149
Latvia	1,540	1,540	1,540	1,513	....	†
Lithuania (including Memel and part of Pinsk region)	2,629	2,629	2,460	2,460	....	†
Luxemburg	92	92	92	92	92	93
Netherlands	3,607	3,607	3,607	3,607	3,607	2,408
Norway	12,202	12,202	12,202	12,202	12,202	5,941
Poland (including Eastern Galicia and part of Pinsk region)	30,977	30,977	31,146	29,730	25,827	26,129
Portugal (including Azores and Madeira Islands)	2,465	2,465	2,465	2,465	2,520	2,486
Rumania	7,419	7,419	7,419	7,419	7,419	7,429
Russia, European and Asiatic (excluding barred zone)	24,405	24,405	24,405	24,405	34,284	28,908
Spain (including Canary Islands)	912	912	912	912	912	888
Sweden	20,042	20,042	20,042	19,867	20,042	8,766
Switzerland	3,752	3,752	3,752	3,752	3,752	3,723
Yugoslavia	6,426	6,426	6,426	6,426	6,426	6,644
Other Europe (including Andorra, Gibraltar, Liechtenstein, Malta, Monaco, and San Marino)	86	86	86	86	86	144
Palestine	57	57	57	57	56	214
Syria	882	882	928	928	906	1,008
Turkey (European and Asiatic, including Smyrna region, and Turkish-Armenian region)	2,654	2,654	2,388	2,388	656	1,096
Other Asia (including Cyprus, Hedjaz, Iraq (Mesopotamia), Persia, Rhodes, and any other Asiatic territory not included in the barred zone; persons born in Asiatic Russia are included in the Russia quota)	92	92	81	81	81	528
Africa (other than Egypt)	104	104	122	122	122	195
Egypt	18	18				
Atlantic Islands (other than Azores, Canary Islands, Madeira, and islands adjacent to the American continents) ..	121	121	121	118	65	83
Australia	279	279	279	279	279	279
New Zealand and Pacific islands	80	80	80	80	80	88
Total	357,803	357,642	357,803	335,480	356,995	243,953

* Turkish and Russian Armenia for the year 1922.

† Estonia, Latvia, and Lithuania included with Russia for the year 1922.

‡ Iceland included with other Europe for the year 1922.

The next table shows the same information classified by specified groups of countries.

TABLE 6.—IMMIGRATION QUOTAS ALLOTTED TO SPECIFIED AREAS AND THE NUMBER OF ALIENS ADMITTED AND CHARGED AGAINST SUCH QUOTA ALLOTMENTS, FISCAL YEARS ENDED JUNE 30, 1922, 1923 AND 1924

Areas	1924		1923		1922	
	Quota	No. admitted	Quota	No. admitted	Quota	No. admitted
Northern and western Europe	197,555	197,555	197,555	177,943	198,082	91,862
Southern and eastern Europe, including Asiatic Turkey and other Asia	159,646	159,485	159,646	156,938	158,367	151,446
Africa, Australia, New Zealand and other Pacific islands, and Atlantic islands	602	602	602	599	546	645
Total	357,803	357,642	357,803	335,480	356,995	243,953

A total of 879,302 aliens were admitted to the United States during the fiscal year ending June 30, 1924, of which 706,587 were immigrants and 172,715 were non-immigrants. Only 357,642 admissions were charged to the quota. In other words, *46 per cent more aliens were admitted outside the quota than were admitted under it.* The 706,587 immigrants admitted in the fiscal year 1924 were more than the intake of immigrants in any year up to 1882, and exceeded in only 14 fiscal years of our history. Legal admissions from countries *outside* the quota law for 1923-24 are shown in the table below:

TABLE 7.—IMMIGRATION FROM NONQUOTA COUNTRIES IN THE FISCAL YEARS 1923-24

Country of last permanent residence	Immigrants	Non-immigrants	Total
China	7,098	7,721	14,819
Japan	8,018	2,220	10,238
India	193	341	534
Canada and Newfoundland	200,956	9,211	210,167
Central America	2,004	2,252	4,256
Mexico	89,311	4,580	93,891
South America	9,297	3,596	12,893
West Indies	17,558	19,394	36,952
United States .....	.....	80,682	80,682
Other countries	58	23	81
Total	334,493	130,020	464,513

The following table is given in order to compare the figures for the fiscal year 1924 with other years:

TABLE 8.—IMMIGRANT ALIENS FROM CERTAIN COUNTRIES AND AREAS IN SPECIFIED FISCAL YEARS

Countries	1914	1921	1922	1923	1924
England, Scotland, and Wales.	48,729	51,142	25,153	45,759	59,490
Germany	35,734	6,803	17,931	48,277	75,091
Ireland	24,688	28,435	10,579	15,740	17,111
Norway, Sweden, and Denmark	29,391	22,854	14,625	34,184	35,577
Other northern and western Europe	25,591	29,317	11,149	12,469	16,077
Total	164,133	138,551	79,437	156,429	203,346
Austria	134,831	4,947	5,019	8,103	7,505
Hungary	143,321	7,702	5,756	5,914	5,806
Greece	35,832	28,502	3,457	3,333	4,871
Italy	283,738	222,260	40,319	46,674	56,246
Russia	255,660	6,398	17,143	17,507	12,649
Other southern and eastern Europe	40,876	244,004	65,254	69,960	73,916
Turkey in Asia	21,716	11,735	1,998	2,183	2,820
Total	915,974	525,548	138,946	153,674	163,813
British North America	86,139	72,317	46,810	117,011	200,690
Mexico	14,614	30,758	19,551	63,768	89,336
All other countries	37,620	38,054	24,812	32,037	49,711
Grand total	1,218,480	805,228	309,556	522,919	706,896

With the exception of the rapid increase in immigration from Germany between 1921 and 1924, the record of the first group of countries presents no very unusual features. The number admitted from Germany in 1914 was not far from the annual average for 15 or 20 years prior to the war, but the fact that more than twice as many came in 1924 suggests the probability that except for quota limitations a revival of the large German immigration of earlier years might have been expected. The number coming from Ireland during this period was considerably below pre-war figures and, unlike the countries of Great Britain and Scandinavia, it had not increased greatly since 1921. Although not shown separately in the table, it is of interest to note that in the year 1924 Scotland contributed 33,471

immigrants, or more than one-half of all who came from the four British countries. In this connection it may be stated that prior to the war immigration from Scotland averaged about 14,000 annually.

The figures in the second and third groups in the table are clearly indicative of the radical effect brought about by the policy of restriction which began with the enactment of the quota limit law in May, 1921. The record of immigration in 1914 from the countries of south and east Europe and the Near East, although a little higher than the pre-war normal, are nevertheless fairly representative of that period. By 1921, as the table shows, there had been a remarkably quick revival, which followed an almost complete cessation of the movement from these sources during the war years, and, as pointed out in the annual reports of the Commissioner-General of Immigration, this revival gave every promise of an unprecedented deluge of immigration when peace was fully established and transportation facilities restored. It will be noted that in 1921 the contribution of Italy, Greece, and Turkey began to approximate pre-war figures, and while Austria, Hungary, and Russia, formerly prolific sources of immigration, sent comparatively few in that year, a large part of the 244,004 recorded as coming from other south and east Europe came from territory once belonging to those three countries. Then came the limitations imposed by the quota act and during the three years it was in force the total number admitted from south and east Europe and Turkey was considerably below the partially revived immigration from the same sources in 1921, and less than one-half as great as the number who came in the single year 1914.

In the case of both of the European groups under consideration the extent of possible immigration was limited by the quota act, and what the influx might have been except for that restraint can only be conjectured. It is safe to say, however, that it would have far exceeded that of any like period in our immigration history. Natives of

Canada and Mexico, and persons born in other countries who had resided there for five years, were not subject to quota limitations, and these people simply came in unprecedented numbers to take advantage of opportunities which were closed or largely closed to European immigrants.

Under the per centum limit act of 1921, 20 per cent of the quota of any country could be admitted in a single month. It was further provided that certain classes of aliens, notably members of the various professions and domestic servants, who were counted against quotas, could be admitted without numerical limit when such quotas became exhausted. In the fiscal year ending June 30, 1924, nearly all of the quotas, large and small, were filled before January 1, with the result that during the remaining six months of the fiscal year considerable numbers were admitted under the exceptions referred to.

"The number admitted in excess of quotas was also added to by reason of court decisions, notably in the so-called Gottlieb case wherein United States Circuit Judge Mack ruled that the liberal exceptions found in the so-called 'Asiatic barred zone' of the immigration act of 1917 were also applicable in the per centum limit law which was enacted four years thereafter. Other Federal courts at New York and also at Boston not only followed the Gottlieb decision but even sought to enlarge the classes to which it applied. Under the circumstances the immigration service could not do otherwise than to admit applicants who came within the scope of these decisions until the Supreme Court of the United States, on May 26, 1924, declared that both the District Court and Circuit Court of Appeals were in error, and that exemptions covering a specific class of aliens mentioned in the act of 1917 could not be made to apply in the case of aliens who had been excluded under a subsequent law."⁴ Upward of 20,000 aliens were admitted under the court decisions referred to, and in order to avoid

⁴ Annual Report of the Commissioner-General of Immigration for 1924, p. 5. See also 285 Fed. 295 and *infra*, p. 179.

their possible deportation, as a result of the Supreme Court decision, Congress provided that their residence in the United States might be legalized.

Briefly stated, then, the increase of 183,977 admissions in the fiscal year 1924 over the preceding year was largely due to increased immigration from Canada, Mexico, and other nonquota countries; to admissions, under exceptions after quotas became exhausted, which in the case of most countries occurred during the first six months of the fiscal year; to the fact that 22,162 more aliens were admitted and charged to quotas than in the previous year; and finally, to admissions under the court decisions above referred to, which admissions were subsequently legalized by Congress.

The net additions to the alien population of the United States resulting from the entire inward and outward alien movements during the three years under the 3 per cent quota law is of interest and value. The following table indicates these net additions:

TABLE 9.—NET ADDITIONS TO THE ALIEN POPULATION OF THE UNITED STATES FOR THE FISCAL YEARS 1922, 1923, 1924

	Fiscal Year 1924	Fiscal Year 1923	Fiscal Year 1922
Immigrant aliens	706,896	522,919	309,556
Nonimmigrant aliens	172,406	150,487	122,949
Total admitted	879,302	673,406	432,505
Emigrant aliens	76,789	81,450	198,712
Nonemigrant aliens	139,956	119,136	146,672
Total departed	216,745	200,586	345,384
Net addition to alien population ..	✓ 662,557	472,820	87,121

The important thing to note in the above table is the great proportionate increase in the net alien population for the fiscal years 1923 and 1924, which means that fewer emigrant aliens were leaving the country for permanent residence elsewhere. It would seem, therefore, that under the quota act immigration was becoming more and more

permanent in character. One of the outstanding things shown by the above statistical record for the fiscal year 1924, was that while the number of immigrant and non-immigrant aliens entering the country was more than 200,000 greater than in the fiscal year immediately preceding it, the increase of emigrant and nonemigrant aliens departing was only 16,159.

The record of this inward and outward movement of aliens from 1908 to the present time is shown in the next table. A study of this table, condensed as it is, discloses several significant facts concerning the trend of immigration and emigration during the preceding 17 years, notably the unusual outward movement following the industrial depression of 1907-08; the relatively large emigration during the early years of the World War, which it is known, included many who went to join the colors of their respective countries; the sudden increase in both immigration and emigration following the armistice; the sharp decline of immigration in 1922 resulting from the quota limit law, and, finally, the revival of immigration and the remarkable decline in emigration during the two fiscal years 1923 and 1924, also under the quota act. In the latter connection it is interesting to note that while the number of aliens of both classes admitted in the fiscal year 1924 was exceeded in 8 of the 17 years considered, the permanent addition to the alien population was numerically larger in 1923-24 than in any other year except 1910, 1913, and 1914. This, to all appearances, is substantial evidence of a greatly increased stability or permanence in immigration under the quasi-restrictive policy represented by the quota limit law, although, of course, it can not be said that the law is the only cause that contributed to that end.

Disregarding the nonimmigrant and nonemigrant classes and considering immigrant and emigrant aliens only, which means those coming for permanent residence here or departing for permanent residence abroad, the record disclosed by the table below is even more interesting and

TABLE 10.—NET INCREASE OF POPULATION BY ARRIVAL AND DEPARTURE OF ALIENS, FISCAL YEARS ENDED JUNE 30, 1908 TO 1924

Period	Admitted			Departed			Increase
	Immigrant	Nonimmigrant	Total	Emigrant	Nonimmigrant	Total	
1908	782,870	141,825	924,695	395,073	319,755	714,828	209,867
1909	751,786	192,449	944,235	225,802	174,590	400,392	543,843
1910	1,041,570	156,467	1,198,037	202,436	177,982	380,418	817,619
1911	878,587	151,713	1,030,300	295,666	222,549	518,215	512,085
1912	838,172	178,983	1,017,155	333,262	282,030	615,292	401,863
1913	1,197,892	229,335	1,427,227	308,190	303,734	611,924	815,303
1914	1,218,480	184,601	1,403,081	303,338	330,467	633,805	769,276
1915	326,700	107,544	434,244	204,074	180,100	384,174	50,070
1916	298,826	67,922	366,748	129,765	111,042	240,807	125,941
1917	295,403	67,474	362,877	66,277	80,102	146,379	216,498
1918	110,618	101,235	211,853	94,585	98,683	193,268	18,585
1919	141,132	95,889	237,021	123,522	92,709	216,231	20,790
1920	430,001	191,575	621,576	288,315	139,747	428,062	193,514
Total 10 years, 1911-1920	5,735,811	1,376,271	7,112,082	2,146,994	1,841,163	3,988,157	3,123,925
1921	805,228	172,935	978,163	247,718	178,313	426,031	552,132
1922	309,556	122,949	432,505	198,712	146,672	345,384	87,121
1923	522,919	150,487	673,406	81,450	119,136	200,586	472,820
1924	706,896	172,406	879,302	76,789	139,956	216,745	662,557
Total 4 years, 1921-1924..	2,344,599	618,777	2,963,376	604,669	584,077	1,188,746	1,774,630
Grand total	10,656,636	2,485,789	13,142,425	3,574,974	3,097,567	6,672,541	6,469,884

significant. This is especially true with reference to the record of the last five years of the period which follows:

Year	Immigrant Aliens	Emigrant Aliens
1920	430,001	288,315
1921	805,228	247,718
1922	309,556	198,712
1923	522,919	81,450
1924	706,896	76,789

Since 1899 all aliens admitted into the United States have been classified by the Government under the head of "races or peoples," as well as by the country of origin, although for quota purposes, viz., since 1921, place of birth controls regardless of race. Thus, an Englishman is counted as such under the head of "races or peoples" whether he comes from England, Canada, or China. The aliens admitted from Turkey in Asia during the fiscal year 1923 included only 158 persons of the Turkish race compared with 658 Armenians, 631 Syrians, 417 Hebrews, 179 Greeks, and 140 of various other races or peoples. Since what is true of Turkey in this case is also true in some degree of every other country from which immigrants come, such a classification has great value. The number of immigrant aliens of the various races or peoples admitted during the fiscal years 1914, 1921 and 1924 is shown in the following table:

TABLE 11.—IMMIGRANT ALIENS ADMITTED TO THE UNITED STATES DURING THE FISCAL YEARS ENDED JUNE 30, 1914, 1921, AND 1924, BY RACES OR PEOPLES

Race or People	Fiscal year		
	1923-24	1920-21	1913-14
African (black)	12,243	9,873	8,447
Armenian	2,940	10,212	7,785
Bohemian and Moravian (Czech)	6,869	1,743	9,928
Bulgarian, Serbian, and Montenegrin	2,482	7,700	15,084
Chinese	4,670	4,017	2,354
Croatian and Slovenian	4,137	11,035	37,284
Cuban	1,412	1,523	3,539
Dalmatian, Bosnian, and Herzegovinian	295	930	5,149

TABLE 11.—IMMIGRANT ALIENS ADMITTED TO THE UNITED STATES DURING THE FISCAL YEARS ENDED JUNE 30, 1914, 1921, AND 1924, BY RACES OF PEOPLES.—(Continued.)

Race or People	Fiscal year		
	1923-24	1920-21	1913-14
Dutch and Flemish	7,840	12,813	12,566
East Indian	154	353	172
English	93,939	54,627	51,746
Finnish	3,975	4,233	12,805
French	48,632	24,122	18,166
German	95,627	24,168	79,871
Greek	5,252	31,828	45,881
Hebrew	49,989	119,036	138,051
Irish	42,364	39,056	33,898
Italian (north)	11,576	27,459	44,802
Italian (south)	47,633	195,037	251,612
Japanese	8,481	7,531	8,941
Korean	122	61	152
Lithuanian	1,991	829	21,584
Magyar	7,446	9,377	44,538
Mexican	87,648	29,603	13,089
Pacific Islander	12	13	1
Polish	19,371	21,146	122,657
Portuguese	3,892	18,856	9,647
Rumanian	1,727	5,925	24,070
Russian	9,531	2,887	44,957
Ruthenian (Russniak)	2,356	958	36,727
Scandinavian (Norwegians, Danes, and Swedes)	40,978	25,812	36,053
Scotch	61,327	24,649	18,997
Slovak	5,523	35,047	25,819
Spanish	3,664	27,448	11,064
Spanish American	3,065	3,325	1,544
Syrian	1,595	5,105	9,023
Turkish	355	353	2,693
Welsh	2,635	1,748	2,558
West Indian (except Cuban)	2,211	1,553	1,396
Other peoples	937	3,237	3,830
Total	706,896	805,228	1,218,480

The next table shows the same data classified according to the races or peoples principally indigenous to specified parts of Europe and the Near East, together with Mexicans and all others, the latter including oriental peoples, Cubans, Spanish Americans, West Indians, and others.

TABLE 12.—IMMIGRANT ALIENS ADMITTED BY PRINCIPAL RACES OR PEOPLES IN FISCAL YEARS SPECIFIED

Race or people	Number admitted			Per cent of total		
	1923-24	1920-21	1913-14	1923-24	1920-21	1913-14
Northern and western Europe	393,342	206,995	253,855	✓ 55.7	25.7	20.8
Southern and eastern Europe and Turkey	192,599	537,144	921,160	27.2	66.7	75.6
Mexicans	87,648	29,603	13,089	12.4	3.7	1.1
All others	33,307	31,486	30,376	4.7	3.9	2.5
Total	706,896	805,228	1,218,480	100.0	100.0	100.0

This table brings out the interesting fact that the proportion of northern and western European peoples in our immigration increased from 20.8 per cent of the whole in 1913-14 to 55.7 per cent in the fiscal year 1924 and that the proportion of southern and eastern European peoples decreased from 75.6 per cent of the whole in 1913-14 to only 27.2 per cent in 1923-24. It will also be noted that as between the two years named there was a numerical increase of nearly 140,000 in the first group and a decrease of 728,561 in the second. It is also interesting to note that immigrants of the Mexican race increased from an insignificant proportion of the whole in 1913-14 to 12.4 per cent in the fiscal year, 1923-24, the numerical increase being from 13,089 to 87,648, a number equal to about 45 per cent of the year's total immigration of southern and eastern European peoples. The proportion of "all others" also increased from 2.5 per cent to 4.7 per cent between the two years under consideration, but there was a small numerical increase in this group.

Among the many changes that resulted from the operation of the per centum limit law was the steady and very considerable increase in the proportion of English-speaking peoples among arriving aliens, as shown in the following table:

TABLE 13.—IMMIGRANT ALIENS OF THE ENGLISH AND NON-ENGLISH SPEAKING RACES ADMITTED, DURING THE FISCAL YEARS SPECIFIED

Fiscal year (ended June 30)	Total admitted	English speaking *	Non- English speaking	Per cent of total	
				English	Non- English
1914	1,218,480	107,199	1,111,281	8.8	91.2
1921	805,228	120,080	685,148	14.9	85.1
1922	309,556	64,172	245,384	20.7	79.3
1923	522,919	131,159	391,760	25.1	74.9
1924	706,896	200,265	506,631	28.3	71.7

* English, Irish, Scotch, and Welsh races.

The immigration record of the fiscal year 1914 was fairly typical in many respects of like records for a generation prior to the World War. In that year only 8.8 per cent of our immigration was of the four English speaking peoples—English, Irish, Scotch, and Welsh—and the total number admitted was only 107,199. In the fiscal year 1923-24, however, the number admitted was 200,265, nearly twice as great as in 1913-14, and they constituted 28.3 per cent of the total immigration. In the same fiscal years, the number of non-English-speaking peoples decreased from 1,111,281 to 506,631, and their proportion in the whole immigration fell from 91.2 to 71.7 per cent. Putting it in another way, in 1913-14 the number of non-English-speaking peoples admitted was more than 1,000,000 in excess of the peoples whose customary language was our own, but in 1923-24 this difference was reduced to about 300,000. From this it is evident that the emergency quota legislation did much good and, therefore, justified the continuation of a quota limitation.

The facts set forth in this chapter will be of great interest to us when we consider the quota provisions in the Act of 1924, the purpose of which is to materially lessen the tide of immigration from the so-called "new" sources, without unduly interfering with the normal movement of north west European peoples into the United States. That the Act of May 19, 1921 accomplished this to some extent is evident from the above facts, and from it came the solution to the quota problem as worked out in the Act of 1924.

CHAPTER VII

THE IMMIGRATION ACT OF 1924

PRESIDENT COOLIDGE'S recommendations on Immigration—History of the Johnson Bill—Provisions of the new law—Non-immigrant classes—Non-quota immigrants—The case for aliens now here without their immediate families—Alien wives of American citizens—Travel permits for aliens now here—Provisions concerning ministers, professors and students—The quota provisions—Preferences within the quotas—Provisions concerning immigration visas—Penal provisions—Provisions to check illegal entry of immigrants as seamen—Burden of proof on the alien—This act is additional legislation on immigration—Sources of opposition.

The numerical restrictions provided for in the 3 per cent Act of May 19, 1921 were drastic, yet the emergency demanded drastic action. The law itself worked many hardships for it was not perfect. Indeed, it was never at any time considered permanent legislation. Its life was extended for two years by the Act of May 11, 1922 for the sole purpose of giving Congress time to work out more permanent legislation. The quota law based on the census of 1910 was not based on historical facts, and, therefore, at best, was a makeshift affair. However, a quota limitation had proved to be the most effective method of restricting immigration yet devised and at no time was the abandonment of such a plan contemplated. It had done much good and within a short time we began to learn many lessons which were to be invaluable when the time came to write a law that would be numerically restrictive, selective and based on historical facts.

In his first annual message to Congress on December 6, 1923 President Coolidge dealt with the immigration question in a constructive manner. He pointed Congress in the right direction when he stated that "American institu-

tions rest solely on good citizenship. They were created by people who had a background of self-government. New arrivals should be limited to our capacity to absorb them into the ranks of good citizenship. America must be kept American. For this purpose, it is necessary to continue a policy of restricted immigration. It would be well to make such immigration of a selective nature with some inspection at the source, and based either on a prior census or upon the record of naturalization. Either method would insure the admission of those with the largest capacity and best intention of becoming citizens. I am convinced that our present economic and social conditions warrant a limitation of those to be admitted. We should find additional safety in a law requiring the immediate registration of all aliens. Those who do not want to be partakers of the American spirit ought not to settle in America."

Since few subjects can stir more argument, more differences of opinion, than immigration, since nothing breeds so much trouble as racial differences, it was inevitable that the drafting of a bill that would carry out the principles of restricted immigration in a constructive manner as outlined by the President in his message would be full of difficulties. The House and Senate Committees on Immigration and Naturalization had studied the problem during the two years of the Sixty-seventh Congress. The conclusions of the House Committee were set forth in a report to the House of Representatives on February 15, 1923.¹ In the congestion of legislation nothing was done before Congress adjourned in March. The intervening months, to December, when Congress again assembled, gave an opportunity for public opinion to crystallize and assert itself.

Before January 20, 1924, fifty proposals dealing with the subject of immigration had been presented in Congress, and many others were introduced after that date, among which were twenty or more well-defined plans for restriction. However, from the time Congress assembled until its

¹ Report No. 1621, House of Representatives, 67th Congress, 4th session.

enactment into law the nation as a whole was concerned only with the Johnson bill, now known as the "Immigration Act of 1924." This measure was drafted by the House Committee and contained its previous recommendations, plus various perfecting amendments. Its principal features are: (1) it preserves the basic immigration law of 1917; (2) it contains the principle of numerical limitation as inaugurated in the Act of May 19, 1921; (3) it changes the quota basis from the census of 1910 to the census of 1890; (4) it reduces the quota admissible in any one year from 3 to 2 per cent; (5) it provides a method of selection of immigrants at the source rather than to permit them to come to this country and land at the immigration stations without previous inspection; (6) it reduces the classes of exempted aliens; (7) it places the burden of proof on the alien to show that he is admissible under the immigration laws rather than upon the United States to show that he is not admissible; and (8) it provides for the exclusion of those who desire to enter as immigrants who are not eligible to become naturalized citizens under our naturalization laws.

The key to the law lies in an understanding of the definition of immigrants. The Act of 1921 dealt with the definition of aliens, whereas this new law deals with the definition of immigrants. All persons who may come to the United States are considered immigrants except those who are exempted in the definition of immigrants. "When used in this Act the term 'immigrant' means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and

seeking to enter temporarily the United States solely in pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.”² While these exempted classes are composed of aliens they are not considered immigrants, and therefore they are not within the scope of the new law.

The law then divides all immigrants into two classes, quota immigrants and non-quota immigrants. Both classes are required to secure certificates, but only those in the quota class are counted to fill the quotas which are allotted to the various countries.

Non-quota immigrants include,³ as stated in section 4: “(a) An immigrant who is the unmarried child under eighteen years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of the petition required under section 9; (b) an immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad; (c) an immigrant who was born in the Dominion of Canada, Newfoundland, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, and his wife, and his unmarried children under eighteen years of age, if accompanying or following to join him; (d) an immigrant who continuously for at least two years immediately preceding the time of application for admission to the United States has been, and who seeks to enter the United

² Section 3 of the Act.

³ The Act of May 26, 1926, relating to alien veterans of the armed forces of the United States during the period of the World War is of wide application. Under it provision is made for the admission of such veterans not only without regard to the quota but also without regard to many of the general provisions of the law. In addition, their wives and minor children accompanying or following to join them within six months are exempted from the quota. According to the Commissioner-General of Immigration in his report for 1926 “there were in 1924 from 12,000 to 15,000 such veterans in Italy alone. It is believed that this number represents the largest group in any one country. It will enable many expatriated naturalized American citizens to return, with the families they have acquired abroad, and will, no doubt, prove an important exception to the quota law” (page 21).

States solely for the purpose of, carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary, or university; and his wife, and his unmarried children under eighteen years of age, if accompanying or following to join him; or (e) an immigrant who is a bona fide student⁴ at least fifteen years of age and who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Secretary of Labor, which shall have agreed to report to the Secretary of Labor the termination of attendance of each immigrant student, and if any such institution of learning fails to make such reports promptly the approval shall be withdrawn.”⁵

A brief study of this legislation makes it clear that the Act is filled with humane provisions.⁶ Under the Act of 1921 a family might arrive at a port in the United States, only to find, as many did, that the quota provisions necessitated a family division. This led to many hardships and much criticism. It was a weakness that had to be eliminated. The Act of 1924 does this by encouraging an immi-

⁴In his report for 1925 the Commissioner-General of Immigration recommended that “authority should be included in Section 15 of the act for the imposition of a bond to guarantee the maintenance of the exempt status of an immigrant student, where the applicant is not believed to be seeking admission in good faith, under Section 4 (e). As the matter now stands, the bureau finds itself compelled to refuse admission to many aliens applying as immigrant students, whom it could properly admit as such if authority were expressly conferred to exact bonds for the maintenance of student status” (page 28). He repeated this recommendation in his 1926 report (page 23). The defect not having been foreseen, obviously should be remedied.

⁵In *United States of America, ex rel. Guido Antonini, v. Henry H. Curran*, Commissioner of Immigration of the Port of New York, Circuit Court of Appeals, Second Circuit; (see *United States Daily* for November 29, 1926) the court held that an Italian student who had been admitted to college and was a bona fide student could not be held subject to exclusion or deportation as an alien on the ground that during his studies he gained his maintenance and tuition by self-supporting labor. In *Low Cho Oy, Appellant, v. John D. Nagle*, Commissioner of Immigration for the Port of San Francisco; Circuit Court of Appeals, Ninth Circuit, No. 4941, it was held that the admission of a Chinese as a student gave him the right to bring his wife with him. *United States Daily*, December 4, 1926.

⁶In his report for 1925 (page 1) the Commissioner-General of Immigration refers to the immigration act of 1924 as a “law with a heart.”

grant to bring his family with him. Under the plan for the issuance of immigration visas an immigrant can learn before leaving his home if all his family and the relatives who desire to accompany him can enter the United States with him within the quota.⁷

— The opponents of the bill tried, but in vain, to amend it so as to permit all children, parents, and other relatives to enter as non-quota immigrants. The advocates of restriction contended that their purpose was to load the law down with so many “humane” provisions as to destroy the quota provisions indirectly and altogether. Thus, it was argued, they would have accomplished indirectly what they failed to do directly.

In one particular, however, the law may be said to create a serious hardship, although to what extent it is difficult to say. Under the bill as first drafted in the report of February 15, 1923, an alien already here, who had taken out his first papers and intended to become fully naturalized, could bring in his wife and minor children as non-quota immigrants. Under the law as finally enacted, he cannot do so, and, therefore, they must enter as quota immigrants, if they get here. Investigations showed that many aliens now here could and should have brought their families

⁷In his annual report for 1926 the Secretary of Labor recommended to Congress that a provision be added to the immigration laws requiring an alien head of family seeking visa for permanent residence in the United States to express intention regarding the future residence of the family, and in the event that he expects later to have the family join him in the United States, each member of the family would be required to submit to preliminary examination to determine admissibility and to have visas issued at the same time that his own arrangements are made. Should dependent members of that family be found inadmissible, the entire family would then be fully cognizant of the fact that such members could never be admitted to the United States.

Since the life of an immigrant visa is now limited to four months, Secretary Davis also recommended that authority be vested in an administrative officer to extend the validity of immigration visas so issued to members of families whose heads are in the United States for a reasonable length of time. If the life of a “family” visa were made one year, and some arrangement perfected whereby it could be extended upon appropriate showing of cause, the separation of families through immigration of the future could be practically eliminated. The visas thus issued would, of course, carry the quota allotments in like manner as now provided by law. Pages 110-111.

with them, although some came here to work and save enough to send for them later. While Congress foresaw to some extent the situation which has resulted for immigrants now here without their families, yet it feared a loophole might result that would let in too many immigrants. However, as everything is to be gained and nothing lost from a united family life, Congress may reconsider and permit aliens now in the United States to bring in their wives and minor children as non-quota immigrants.⁸ The present state of public opinion would seem to justify such a change in the law. However, it would be necessary to put a time limit when such preferences would have to end.

On November 8, 1924 Secretary of Labor Davis expressed his opinion on this point as follows: "I would provide for preference in admission to this country for the families of aliens already in the United States. Humanity demands that our immigration law shall not operate to keep husband and wife, brothers and sisters, or parents and children apart wherever it is possible to bring them together. There is an economic reason, too, for uniting the families of immigrants. For, if the alien is unable to bring his family to his new country, he is forced to support it abroad with the wages he earns in America. If he is enabled to bring them here, the buying power of his American wages goes to help American business."⁹

In his annual message to Congress, December 3, 1924 President Coolidge stated: "I should like to see the administrative features of this (the immigration) law rendered a little more humane for the purpose of permitting those already here a greater latitude in securing admission of members of their own families. But I believe this law in principle is necessary and sound and destined to increase

⁸ Important debates on the admission of relatives of aliens now in the United States took place in the Senate on December 14, 1926, and in the House, January 25, 1927. For the full text of these debates see *Congressional Record*, 69th Congress, 2d Session, pages 407-414 and 2281 to 2284.

⁹ In his annual report for 1926 (page 110) the Secretary of Labor repeated these recommendations.

greatly the public welfare. We must maintain our own economic position, we must defend our own national integrity."

In his report for 1925 the Commissioner-General of Immigration stated: "It is my recommendation that 'non-quota immigrant' status should be extended to the parents of citizens, and further that the age limit for granting non-quota visas to the unmarried children of citizens should be raised from 18 to 21 years, thus eliminating two preference classes—the parents and the unmarried children, between the ages of 18 and 21 years, of citizens of the United States—and placing these two classes among the non-quota classes. This will expedite the admission of parents and children of American citizens and the bureau sees no reason why we should delay what is so clearly an act of mercy."¹⁰ He repeated virtually the same recommendation in his report for 1926.¹¹

By the Act of September 22, 1922, it was provided, "That any woman who marries a citizen of the United States after the passage of this act, or any woman whose husband is naturalized after the passage of this act, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all the requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required.

(b) In lieu of the five-year period of residence within the State or Territory where the naturalization court is held, she shall have resided continuously within the United States, Hawaii, Alaska, or Porto Rico, for at least one year immediately preceding the filing of the petition." This simply means that when an alien girl marries an American citizen she does not by that marriage ceremony become an American citizen. Up to the time of this act she *ipso facto* became an American citizen and could come in as such.

¹⁰ Page 28.

¹¹ Page 23.

Since the passage of the Act of September 22, 1922, we have had cases where wives of American citizens, seeking admission into the United States, could not come in because the quota of their nationality was filled. Under the Act of 1924 such wives of American citizens may enter as non-quota immigrants.¹² This is a humane provision despite the fact that frequently a delay of at least three months is necessary to secure the proper papers to admit her as a non-quota immigrant.

Another humane provision is the one which permits an alien now in this country to go out on a temporary visit and return exempt from the quota provisions. Let us assume that the immigrant has taken out his first papers and has foresworn allegiance to his mother country. He has not taken on complete allegiance to the United States. In that event he cannot get a passport from us to the country from which he came nor can he get a passport from the country he left. The new law provides that he be given a kind of travel permit which simply shows that he travels with the intention of returning to the United States. However, it does not relieve him from being debarred on his return if he has contracted any disease or subjected himself to deportation under the Burnett Law.¹³ This provision, enacted for the benefit of aliens now in the United States, permits them to return to their native land, yet it prohibits

¹² In his report for 1925 the Commissioner-General of Immigration recommended that "Section 4(a) of the act should be amended to provide that a wife who is an American citizen, and resides in the United States, may petition for the issuance of a non-quota immigration visa to her alien husband. As it now stands, the law permits such a citizen wife to petition only for preference for her husband. This subdivision of Section 4 should also be amended to provide that either a husband or wife who is a citizen of the United States may petition for the issuance of non-quota immigration visas to the children of either alien spouse" (page 28). He repeated virtually the same recommendations in his report for 1926 (page 23).

¹³ In his report for 1926 the Commissioner-General of Immigration stated: "A permit to reenter the United States, once issued to an alien resident, should be made prima facie evidence of his right to return, barring fraud or disease. To give an alien a permit to reenter, which he has a right to believe entitled him to readmission, and then to bar him because of some requirement, which he has previously met and passed, is an injustice of which no government should be guilty" (page 22).

additional ones from coming except under the quota. It will be of most benefit to the aliens now here from Southern Europe, the so-called new immigration, for these are the ones who for the most part desire to return home to visit their families and friends. Experience should prove this to be a beneficial provision instead of a loophole as feared by some. If properly enforced it will prove the former, otherwise the latter.¹⁴

Concerning this permit to enter the United States after a temporary absence, Section 10 states:

“(a) Any alien about to depart temporarily¹⁵ from the United States may make application to the Commissioner-General for a permit to reënter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath . . . and shall be accompanied by two copies of the applicant's photograph.

(b) If the Commissioner-General finds that the alien has been legally admitted to the United States, and that the application is made in good faith, he shall, with the approval of the Secretary of Labor, issue the permit, specifying therein the length of time, not exceeding one year, during which it shall be valid. The permit shall be in such form as shall be by regulations prescribed and shall

¹⁴ During the fiscal year 1926 alien residents of the United States made 119,254 applications for permits to reenter this country after a temporary visit abroad, which was an increase of 29,254 over the preceding year. Of the 119,254 applications received, 104,666 return permits were issued and 6,636 were refused, the refusals being mainly for failure on the part of the applicant to establish legal entry into the United States. 4,034 extensions were granted on permits already issued. Report of Commissioner-General of Immigration, page 11.

¹⁵ In *Francesco Lidennici, Severio Desiderio, Giovanni Candiotti and Nicolo Finaro v. James J. Davis, Secretary of Labor, and W. W. Husband, Commissioner of Immigration*; Court of Appeals, District of Columbia; No. 4405; *United States Daily*, December 13, 1926, the court held that the above Italians, returning after six months, were aliens who had entered without right and in violation of the immigration statutes. The order of deportation was affirmed. The complainants alleged that it was their intention on departing from the United States to return to it, although Lidennici had been in Italy about three years; Desiderio, about three years; Candiotti, about nine years and Finaro, about eight years. Furthermore, their re-entry was not made at a specified port.

have permanently attached thereto the photograph of the alien to whom issued, together with such other matter as may be deemed necessary for the complete identification of the alien.

(c) On good cause shown the validity of the permit may be extended for such period or periods, not exceeding six months each, and under such conditions, as shall be by regulations prescribed.

(d) For the issuance of the permit, and for each extension thereof, there shall be paid a fee of \$3.¹⁶

(e) Upon the return of the alien to the United States the permit shall be surrendered to the immigration officer at the port of inspection.

(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning."¹⁷

Section 4 (d) grew out of a long contested case, decided May 26, 1924, by the Supreme Court of the United States, which decision fixed the construction of the immigration acts of 1917 and 1921, in respect to the admissibility of the wives and minor children of admitted immigrants.

Gittel and Israel Gottlieb were the wife and four-year-old child, respectively, of Solomon Gottlieb. Solomon Gottlieb was a Jewish rabbi who came from Palestine to the United States some 14 months before his wife and child came. He was duly admitted and, procuring a position, furnished support to his family until able to send passage money.

¹⁶ For the fiscal year 1926 the sum of \$326,100 was turned over to the disbursing office of the department for transmission to the Treasury. Report of the Commissioner-General of Immigration for 1926, page 11.

¹⁷ In *John P. Johnson, U. S. Commissioner of Immigration, v. Cornelius F. Keating, ex rel. Francesco Tarantino*; Circuit Court of Appeals, First Circuit (see *United States Daily* for January 15, 1927, page 7) the court held that the reentry permit or immigration visa is not essential evidence of the real status of a non-quota immigrant returning from a temporary absence abroad. The exclusion of Tarantino on the sole ground that he had no return permit or immigration visa was held to be unjust and unreasonable, the equity of the case being undisputed.

On their arrival they were excluded because the quota from Palestine was full. On a writ of habeas corpus in the District Court of New York admission was ordered, whereupon an appeal was taken to the Circuit Court of Appeals. Judge Rogers went carefully into the case, examining the effect of the quota law of 1921 on the basic law of 1917. The 1917 act provides that ministers and religious teachers and their legal wives and children under 16 are not subject to the exclusion clause of that act; this act not having been repealed by the act of 1921, an effort must be made to construe the limitations of the latter act so as not to do violence to the act of 1917. Rules for the construction of statutes were discussed, one of which was that absurd results should be avoided if possible. The conclusion was reached that Congress intended nothing by the act of 1921 that would "create a condition so unreasonable and absurd as to admit a minister while at the same time excluding the members of his family." The order of the court directing the release of the wife and child was therefore affirmed.¹⁸

✓ This decision was made a precedent in a number of cases involving similar and related conditions; but the Department of Labor was not satisfied with the ruling as a final determination and prosecuted an appeal to the Supreme Court. Here it was conceded that the laws of 1917 and 1921 should be held as complementary, the provisions of the earlier act being "still fully operative and may be considered as forming a part of the later act." However, the framing of the law was said to be so definite as not to permit construction. The case was concededly "one of peculiar and distressing hardships," so that if a favorable conclusion were possible it would naturally be made use of; but an examination of the exceptions and qualifications made it impossible to extend leniency to the case in hand, the limited scope of the exception relied upon "being plain, and no amount of discussion could make it plainer." The limitation being what it was, any claim that it would be "absurd and unreasonable" to bar wives and children of

¹⁸ 285 Fed. 295. See also *supra*, p. 161.

admitted persons could not have weight, "since the result we have stated necessarily follows from the plain words of the law, for which we are not at liberty to substitute a rule based upon other notions of policy or justice."

This decision clearly upheld the construction of law given it by the Department of Labor in its original finding, and exposed to the possibility of deportation a considerable number of admitted persons, wives and children of immigrants residing in this country, who had been admitted in obedience to the ruling of the courts below, but under notice that an appeal had been taken. However, Congress in its closing session on June 7, provided for the continued residence in this country of such persons, "approximately 8,800 aliens who are now here and about 500 who are on the ocean." A resolution (H. J. Res. 283) lifting the ban against certain groups of such persons specified those heretofore admitted under a construction of the act of 1921 "required by court decision." This resolution was signed by the President on the same day. Under the act of 1924, the wife and unmarried children under eighteen years of age of a minister, or a professor of a college, etc., who seeks to enter the United States solely for the purpose of carrying on his vocation, provided he has pursued the same continuously for two years immediately preceding the time of his application for admission, may accompany him *or follow to join him later*.¹⁹ The law is now so specific concerning the admittance of wives and children of non-quota immigrants that it is difficult to foresee how many problems can arise under it.

The basis and heart of the new law are those provisions concerning quota immigrants. Section 5 states, "when used in this Act the term 'quota immigrant' means any immigrant who is not a non-quota immigrant. An alien who is

¹⁹ The act of July 3, 1926, pertaining to the wives and children of ministers and professors who entered the United States BEFORE July 1, 1924, added to the classes exempt from the quota. Under it, for a period of one year, this class of immigrants may be admitted upon showing that the husband and father entered in pursuit of the exempt vocation. This was in accord with the recommendation of the Commissioner-General of Immigration in his report for 1925.

not particularly specified in this Act as a non-quota immigrant or a non-immigrant shall not be admitted as a non-quota immigrant or a non-immigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration."

Section 6 provides for certain preferences within the quotas, that is, in the issuance of immigration visas to immigrants it is the duty of consuls to give preferences when necessary to the following classes:

"(1) To a quota immigrant who is the unmarried child under 21 years of age, the father, the mother, the husband, or the wife, of a citizen of the United States who is 21 years of age or over, and

"(2) To a quota immigrant who is skilled in agriculture, and his wife, and his dependent children under the age of 16 years, if accompanying or following to join him. The preference provided in this paragraph shall not apply to immigrants of any nationality the annual quota for which is less than 300."

However, these preferences shall not in the case of quota immigrants of any nationality exceed 50 per centum of the annual quota for such nationality, while no priority in preference is to be granted to the class of immigrants specified in paragraph (1) over the class specified in paragraph (2). In case of quota immigrants of any nationality the preference provided in this section shall be given in the calendar month in which the right to preference is established, if the number of immigration visas which may be issued in such month to quota immigrants of such nationality has not already been issued; otherwise in the next calendar month.

As we have noted, the Act of 1921 admitted from any one country 3 per cent of the number of persons born in that country who were resident in the United States as determined by the census of 1910. The total quota was 357,803. The Act of 1924 provides in section 11 that "The annual quota of any nationality shall be two per centum

of the number of foreign born individuals of such nationality resident in continental United States as determined by the United States census of 1890, but the minimum quota of any nationality shall be 100." On this basis the total annual quota for 1925 and 1926 was 164,667.²⁰

This quota plan was to stand for three years, after which the following quota plan was supposed to go into effect:

"The annual quota of any nationality for the fiscal year beginning July 1, 1927, and for each fiscal year thereafter, shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin (ascertained as hereinafter provided in this section) bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100."

Provisions for working out this plan are carried in paragraphs (c), (d), and (e) of section 11, including a provision for putting this plan into operation by proclamation of the President, under certain conditions. Broadly speaking, the original effect of section 11 was that for three years the quota shall be based on a percentage of the foreign-born in the United States in 1890, and thereafter the quota percentage was to be based upon the whole white population of the United States, with due regard to the national origin of that population. Section 12 provides for the working out of the quotas based on the census of 1890. We shall discuss these quota provisions fully in the next chapter, their importance justifying such separate study.²¹

²⁰ 145,971 immigrants in 1925 and 157,432 immigrants in 1926 were admitted under the quota provisions. Report of the Commissioner-General of Immigration for 1926, page 6.

²¹ On February 1, 1927, the Senate, without a record vote, adopted Senate Joint Resolution No. 152, introduced by Senator Johnson of California, which would postpone the effective date of the National Origins clause from April 1, 1927 to April 1, 1928. The House Committee amended this resolution to provide for the entire repeal of the national origins provisions. It reported the resolution, thus amended, favorably to the House on February 8, 1927. On March 3 the House passed the Senate resolution without amendment. The President approved it March 4, 1927. Public Resolution No. 69.

While further restricting immigration in a practical manner, another important purpose of the new law, as we have seen already, is to reduce hardships to the absolute minimum, to avoid the division of families, to save the nationals of other countries the expense, perils and hardships of the ocean trip to the United States, only to find that for any one of various reasons the immigrant or some member of his family may not enter. One of the most constructive provisions of the new law designed to reduce such hardships, as well as to better control the tide of immigration, is the one which provides for a form of examination overseas. Until several years ago such a provision was deemed impractical and impossible. Yet such a plan had the approval of virtually all thoughtful students of the problems of immigration. It is the nearest approach to the examination of immigrants overseas, recommended by Presidents Harding and Coolidge and so many others, that the United States may safely adopt unless we are willing that medical, physical and mental examinations made in other lands shall be final, and that the making of such examinations shall be a subject of treaty regulations.

The recommendations of President Harding, in his message at the opening of the fourth session of the Sixty-seventh Congress, in regard to this subject, were as follows: "We had better provide registration for aliens, those now here or continually pressing for admission, and establish our examination boards abroad, to make sure of desirables only. By the examination abroad we could end the pathos at our own ports, when men and women find our doors closed, after long voyages and wasted savings, because they are unfit for admission. It would be kindlier and safer to tell them before they embark."

The certificate plan of control, designated in the act as "immigration visas," was built up from suggestions of former Commissioner-Generals Caminetti and Husband, Secretary of Labor Davis and others. The plan, as worked out, is provided for in the law as follows:

"Sec. 2 (a) A consular officer upon the application of any immigrant may (under the conditions hereinafter prescribed and subject to the limitations prescribed in the act or regulations made thereunder as to the number of immigration visas which may be issued by such officer) issue to such immigrant an immigration visa which shall consist of one copy of the application provided for in section 7, visaed by such consular officer. Such visa shall specify (1) the nationality of the immigrant; (2) whether he is a quota immigrant or a non-quota immigrant; (3) the date on which the validity of the immigration visa shall expire; and (4) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.

"(b) The immigrant shall furnish two copies of his photograph to the consular officer. One copy shall be permanently attached by the consular officer to the immigration visa. . . .

"(c) The validity of an immigration visa shall expire at the end of such period, specified in the immigration visa, not exceeding four months, as shall be by regulations prescribed. . . . if the vessel, before the expiration of the validity of his immigration visa, departed from the last port outside the United States and outside foreign contiguous territory at which the immigrant embarked, and if the immigrant proceeds on a continuous voyage to the United States, then, regardless of the time of his arrival in the United States, the validity of his immigration visa shall not be considered to have expired.

"(e) The manifest or list of passengers required by the immigration laws shall contain a place for entering thereon the date, place of issuance, and the number of the immigration visa of each immigrant. The immigrant shall surrender his immigration visa to the officer at the port of inspection, who shall at the time of inspection indorse on the immigration visa the date, the port of entry, and the name of the vessel, if any, on which the immigrant arrived.

The immigration visa shall be transmitted forthwith . . . to the Department of Labor.

“(f) No immigration visa shall be issued to an immigrant if it appears to the consular officer, from statements in the application, or in the papers submitted therewith that the immigrant is inadmissible to the United States under the immigration laws, nor shall such immigration visa be issued if the consular officer knows or has reason to believe that the immigrant is inadmissible to the United States under the immigration laws.

“(g) Nothing in this Act shall be construed to entitle an immigrant, to whom an immigration visa has been issued to enter the United States, if, upon arrival in the United States, he is found to be inadmissible to the United States under the immigration laws. The substance of this subdivision shall be printed conspicuously upon every immigration visa.

“(h) A fee of \$9 shall be charged for the issuance of each immigration visa. . . .”

Section 7 deals with the application for the immigration visa. It provides as follows:

“(a) Every immigrant applying for an immigration visa shall make application therefor in duplicate in such form as shall be by regulations prescribed.

“(b) In the application the immigrant shall state (1) the immigrant's full and true name; age, sex, and race; the date and place of birth; places of residence for the five years immediately preceding his application; whether married or single, and the names and places of residence of wife or husband and minor children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); ability to speak, read, and write; names and addresses of parents, and if neither parent living, then the name and address of his nearest relative in the country from which he comes; port of entry into the United States; final destination, if

any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, what relative or friend and his complete name and address; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not he intends to abide permanently in the United States; whether ever in prison or alsmhouse; whether he or either of his parents has ever been in an institution or hospital for the care and treatment of the insane; (2) if he claims to be a non-quota immigrant, the facts on which he bases such claims; and (3) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws, as may be by regulations prescribed.

“(c) The immigrant shall furnish, if available, to the consular officer, with his application, two copies of his ‘dossier’ and prison record and military record, two certified copies of his birth certificate, and two copies of all other available public records concerning him kept by the Government to which he owes allegiance. One copy of the documents so furnished shall be permanently attached to each copy of the application and become a part thereof. . . .

“(d) In the application the immigrant shall also state whether or not he is a member of each class of individuals excluded from admission into the United States under the immigration laws, and such classes shall be stated on the blank in such form as shall be by regulations prescribed, and the immigrant shall answer separately as to each class.

“(e) If the immigrant is unable to state that he does not come within any of the excluded classes, but claims to be for any legal reason exempt from exclusion, he shall state fully in the application the grounds for such alleged exemption.

“(f) Each copy of the application shall be signed by the immigrant in the presence of the consular officer and verified by the oath of the immigrant administered by the consular officer. . . .

“(g) In the case of an immigrant under eighteen years

of age the application may be made and verified by such individual as shall be by regulations prescribed.

“(h) A fee of \$1 shall be charged for the furnishing and verification of each application.”

Concerning the issuance of immigration visas to relatives Section 9 states: “(b) Any citizen of the United States claiming that any immigrant is his relative, and that such immigrant is properly admissible to the United States as a non-quota immigrant under the provisions of sub-division (a) of section 4 or is entitled to preference under section 6, may file with the Commissioner-General a petition in such form as may be by regulations prescribed, stating (1) the petitioner’s name and address; (2) if a citizen by birth the date and place of his birth; (3) if a naturalized citizen the date and place of his admission to citizenship and the number of his certificate, if any; (4) the name and address of his employer or the address of his place of business or occupation if he is not an employee; (5) the degree of the relationship of the immigrant for whom such petition is made, and the names of all the places where such immigrant has resided prior to and at the time when the petition is filed; (6) that the petitioner is able to and will support the immigrant if necessary to prevent such immigrant from becoming a public charge; and (7) such additional information . . . as may be by regulations prescribed.”²²

“(c) The petition shall be made under oath. . . . Application may be made in the same petition for admission of more than one individual.

“(d) The petition shall be accompanied by the statements of two or more responsible citizens of the United States, to whom the petitioner has been personally known for at least one year, that to the best of their knowledge

²² During the fiscal year 1925 approximately 29,000 petitions from citizens were received, of which 25,002 were approved and 3,900 rejected. The petitions approved covered approximately 50,000 aliens. Report of the Commissioner-General of Immigration for 1925, page 10. In 1926 the number of petitions was 23,856, of which 18,659 were approved and approximately 2,000 rejected. The petitions approved covered about 30,000 aliens. Report for 1926, page 12.

and belief the statements made in the petition are true and that the petitioner is a responsible individual able to support the immigrant or immigrants for whose admission application is made.

“(e) If the Commissioner-General finds the facts stated in the petition to be true, and that the immigrant in respect of whom the petition is made is entitled to be admitted to the United States as a non-quota immigrant . . . he shall, with the approval of the Secretary of Labor, inform the Secretary of State of his decision, and the Secretary of State shall then authorize the consular officer with whom the application for the immigration visa has been filed to issue the immigration visa or grant the preference.

“(f) Nothing in this section shall be construed to entitle an immigrant, in respect of whom a petition under this section is granted, to enter the United States as a non-quota immigrant, if, upon arrival in the United States, he is found not to be a non-quota immigrant.”

Two paragraphs in Section 11 contain provisions concerning visas. They are as follows:

“(f) There shall be issued to quota immigrants of any nationality (1) no more immigration visas in any fiscal year than the quota for such nationality, and (2) in any calendar month of any fiscal year no more immigration visas than 10 per centum of the quota for such nationality, except that if such quota is less than 300 the number to be issued in any calendar month shall be prescribed by the Commissioner-General, with the approval of the Secretary of Labor, but the total number to be issued during the fiscal year shall not be in excess of the quota for such nationality.

“(g) Nothing in this Act shall prevent the issuance (without increasing the total number of immigration visas which may be issued) of an immigration visa to an immigrant as a quota immigrant even though he is a non-quota immigrant.”

Section 13 declares: “(a) No immigrant shall be admitted to the United States unless he (1) has an unexpired

immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

“(b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.”

Finally, concerning unused immigration visas, Section 18 declares: “If a quota immigrant of any nationality having an immigration visa is excluded from admission to the United States under the immigration laws and deported, or does not apply for admission to the United States before the expiration of the validity of the immigration visa, or if an alien of any nationality having an immigration visa issued to him as a quota immigrant is found not to be a quota immigrant, no additional immigration visa shall be issued in lieu thereof to any other immigrant.”

Such then are the provisions in the Act of 1924 concerning “oversea inspection,” which make it possible for the first time in our history for the United States Government to effectively control immigration from Europe by a proper enforcement of our immigration laws, as well as to enable us to reduce the hardships of the immigrants to a minimum. These provisions are all the more important when we recall that such a plan was first proposed as early as 1837 by Friedrich List.²³ It is to the credit of Friedrich List that he saw so early in our history the only clear and effective way of controlling the immigration tide, viz., by regulating it at its source. If such a plan had been put into force years ago the so-called immigration problem would not be so big or so difficult to solve as it is today. Perhaps no other provision of the Act of 1924 has met with such general approval as this one.

²³ See Chapter II for List's recommendations, pp. 41-42.

Under the plan as worked out and now in operation we can go fully into the past records of the immigrants, and can thereby learn their family history, their mental, moral, and physical qualifications. We are now able to weed out in advance the weaklings, the diseased, and the morons. We come in personal touch through our consuls with each immigrant before he leaves his native land.²⁴ We are able to tell him that he can't come in since he belongs to a certain excluded class, if such is the case; that a certain member of his family can't enter, for a similar reason; or that the quota is exhausted. It is better to let him know the truth before he departs. To do so prevents undue hardships, uncertainty, and unnecessary expense to those who come. When he is given the immigration visa he knows that he may enter as far as the quota is concerned. While he may be unable to pass the final inspection and medical examination which is made at the port of entry into the United States, yet his chances are better now than they were before with no official overseas examination. The number rejected at the ports of entry have been less under the present law than formerly.²⁵ Such a plan has eliminated the racing of steamships into the ports of entry on the first day of each month. It has eliminated the necessity

²⁴ In his annual report for 1926, page 48, the Secretary of Labor stated: "One of the outstanding achievements of the year in administration has been the extension of the foreign service to continental Europe. Technical advisers on immigration questions are now assigned not only to the American consulates in the United Kingdom, but also to consulates in Belgium, the Netherlands, Poland, Germany, Norway, Denmark and Sweden," countries which "represent approximately 90 per cent of the total number of quota immigrants admissible to the United States." On December 15, 1926 there were 28 officers stationed abroad doing immigration work, distributed as follows: England 4, Ireland 5, Scotland 2, France 1, Belgium 1, Holland 1, Denmark 1, Germany 8, Norway 2, Sweden 1, and Poland 1. At that time the Public Health Service stated that it would be necessary to assign two relief officers to the British Isles, Germany, and Scandinavia each. *United States Daily*, December 15, 1926. For further details see Hearings of the House Committee on Immigration and Naturalization on "Methods of Examination of Aliens Abroad"—January 21-22, 1926, No. 69.15.

²⁵ Out of 276,646 alien applicants applying at the port of New York during the fiscal year 1925, 3,606, or 1.2 per cent, were rejected and returned. Of a total of 270,074 alien applicants for admission at the same port in 1926, only 1,544, or less than six-tenths of 1 per cent, were excluded. Annual Report, Secretary of Labor, 1926, p. 48.

of immigrants being forced to return to Europe due to exhausted quotas. At the same time it gives to our consuls power to prevent obviously undesirable aliens from coming to America.²⁶ If we wish to destroy the poison or the pollution in a stream, isn't it better to deal with it at its source rather than to try to extract it many miles away when it has also defiled much water that would otherwise be satisfactory?

Section 16 declares: "It shall be unlawful for any person . . . to bring to the United States by water from any place outside thereof (other than foreign contiguous territory) (1) any immigrant who does not have an unexpired immigration visa, or (2) any quota immigrant having an immigration visa the visa in which specifies him as a non-quota immigrant." The penalty for such illegal transportation is a fine of \$1,000 for each immigrant so brought, and in addition a sum equal to that paid by such immigrant for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs to the immigrant on whose account assessed.

Section 22 deals with certain offenses in connection with the documents. "(a) Any person who knowingly (1) forges, counterfeits, or alters, or falsely makes any immigration visa or permit, or (2) utters, uses, attempts to use, possesses, obtains, accepts, or receives any immigration visa or permit, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or who, except under the direction of the Secretary of Labor or other

²⁶ In his Report for 1926 the Secretary of Labor stated: "Foreign Governments, however, still make the primary selection of immigrants to the United States through their control of passport issuances. So long as we require passports as a necessary document for entry into the United States and as a prerequisite to the securing of a visa, this primary selection of immigrants for the United States will be made by the foreign Governments concerned.

"There is not, however, at the present time the evidence of dumping that appeared a few years ago." Quoted in *United States Daily*, December 10, 1926.

proper official, knowingly (3) possesses any blank permit, (4) engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, (5) makes any print, photograph, or impression in the likeness of any immigration visa or permit, or (6) has in his possession a distinctive paper which has been adopted by the Secretary of Labor for the printing of immigration visas or permits, shall upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both.

“(b) Any individual who (1) when applying for an immigration visa or permit, or for admission to the United States, personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name, or (2) sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, an immigration visa or permit, to any person not authorized by law to receive such document, shall upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both.

“(c) Whoever knowingly makes under oath any false statement in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both.”

These provisions have been stated in full to emphasize their seriousness and fullness. That they are necessary was soon evident. The following case occurred in August, 1924. Fifty Poles who were attempting to enter America with false passports and visas were arrested at Marseilles, thanks to the new underwear they wore. The manufacturers of the false papers, which were clever enough to deceive officials in ordinary circumstances, offered a free union suit with the counterfeit credentials. Unfortunately for the buyers, they were so pleased with the bargain that they donned the underwear immediately despite the hot

weather. When the Public Health Surgeon examined the group of Poles he was so surprised at the fact that all wore new union suits of the same make that he reported the fact to an American official. This led to an examination of their papers, which under close scrutiny were obviously fabricated.

Another scheme to beat the immigration law was the formation of an "opera" company. It was discovered and foiled by the police of Naples. A group of ingenious clandestine immigration agents and swindlers formed a regular operetta company with the assistance of several bona fide Italian artists. The program and itinerary featured a tour of North and South America. The company was to call itself the Nuova Italia. The great size of the company, which contained elements strangely extraneous to operatic activities, caused the police to become suspicious and led to its downfall. It was discovered that numerous peasants and workmen figured in the roll of the company in various capacities, each having paid the swindlers from \$250 to \$500 for the privilege.²⁷

These discoveries are illustrations of the fact that the American consular officials must always be on guard against faked papers, and that we must punish violators of the law when it is possible to do so, although it is difficult to understand just how or in what manner we can punish persons guilty of such offenses abroad. If caught at Ellis Island or any other port of entry the question must and will arise as to whether we shall simply deport the offenders (which would give them another opportunity to enter illegally) or whether we shall first fine and imprison and then deport them. In many cases, however, it would be impossible to fine them for they have little or no money. It would seem that the law is not quite definite and clear enough here. It is absolutely necessary that some effective punishment should be worked out.²⁸

²⁷ Taken from the Chicago Tribune, August 9, 1924.

²⁸ Before it adjourned in June, 1926 the House passed what was to have been the Deportation Act of 1926. Due to the pressure of other legislation no action was taken in the Senate prior to the adjournment of

Sections 19 and 20 strengthen the provisions in the Act of 1917 designed to prevent the illegal entrance of aliens as seamen, although it is yet doubtful whether the provisions are altogether adequate to check the evil they are designed to remedy. Experience has demonstrated that the efforts of Congress in the passage of acts over a period of many years excluding undesirable aliens from the United States have been thwarted to an alarming degree by the surreptitious entry of persons debarred by the terms of the statute. One of the most fruitful sources of evasion of these provisions and illegal entry has been the crews employed on ships entering ports of the United States. In a letter to the Hon. John E. Raker, Mr. Furuseth stated:²⁹ "It is generally understood the \$1,000 is paid by the Chinese for being landed in the United States in such a way that he can at once mingle with others of his kind; and when we know that vessels manned with Chinese are constantly going away with from 10 to 40 or even 50 men less in the crew than they had on arrival we must realize that we are here dealing with a temptation to shipowners and to officers of vessels that is great enough to tempt the shipowners as well as the officers. Again, vessels coming from Europe have on one trip to this country left behind them from 50 to 150 persons, a great many of whom would have been refused admission if coming as regular immigrants."

For several years there was no proper enforcement of the provisions in the Act of 1917 designed to deal with this condition of affairs, due to a weakness in section 32. The flaw was that the shipmaster, although required to detain inadmissible seamen, could not be punished for failure to detain unless it was shown that he had notice in writing so to do. Notice in writing anterior to the breach of responsibility to detain was physically impossible.

Congress, March 4, 1927. See Hearings No. 69.1.11 of the House Committee on Immigration and Naturalization, March 25, 26, April 13, 1926 on "Deportation of Alien Criminals, gunmen, narcotic dealers, defectives etc.," for much information concerning the necessity for additional legislation on deportation.

²⁹ *Congressional Record*, Monday, June 23, 1924, p. 11637.

In an apparent effort not to impair in any way the liberty accorded to seamen under the Act of March 4, 1915, commonly known as the LaFollette Law, and at the same time, not to impose regulations so onerous as to cripple the free movement of shipping, and possibly arouse retaliatory legislation abroad, Congress in sections 19 and 20 evolved provisions which have proved inadequate to correct the evils they were designed to cure. As a result they have been subject to much criticism since their enactment. Unquestionably, however, they have helped to give effect to the general principles upon which the law is based. Furthermore, they can be made effective by additional legislation.³⁰ Section 19 provides that "no alien seaman excluded from admission to the United States, under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States."

Section 20, sub-section (a) provides that "the owner, charterer, agent, consignee, or master of any vessel arriving in the United States from any place outside thereof who fails to detain on board any alien seaman employed on such vessel until the immigration officer in charge at the port of arrival has inspected such seaman . . ., or who fails to detain such seaman on board after such inspection or to deport such seamen if required by such immigration officer or the Secretary of Labor to do so, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$1,000 for each alien seaman in respect to whom such failure occurs." Sub-section (b) provides that "proof that an alien seaman did

³⁰ In his report for 1925, the Commissioner-General stated: "While the provision in question has proved decidedly helpful, reports received from seaport stations indicate that the door through which aliens are unlawfully entering in the guise of seamen swings altogether too widely open for the welfare of the country." Page 22.

not appear upon the outgoing manifest of the vessel on which he arrived in the United States . . . shall be prima facie evidence of a failure to detain or deport after requirement by the immigration officer or the Secretary of Labor."

Concerning this, the Report of the Commissioner-General of Immigration for the Fiscal Year Ending June 30, 1924, stated:

"Closely allied to border running is the illegal entry of alleged seamen who come to United States ports as members of ships' crews and, taking advantage of shore privileges granted under the law, desert the vessels bringing them and remain in the country. Bona fide seamen have a legal right to go ashore in any port, and under our laws are free to leave their vessels for the purpose of reshipping foreign. In fact this is the natural and inherent right of seagoing men which even the immigration law recognizes and respects."

The deserting seaman method of gaining illegal entry has been practiced to some extent ever since immigration laws began to interfere with the unrestricted coming of aliens, but under the quota law, and especially during the past few years, such violations have grown to rather alarming proportions. This fact is strikingly illustrated in the following figures, showing the number of reported desertions in United States ports in each year since 1911: ³¹

Fiscal year ending June 30	Number deserting seamen reported	Fiscal year ending June 30	Number deserting seamen reported
1911	6,594	1919	3,388
1912	6,384	1920	13,543
1913	9,136	1921	21,839
1914	9,747	1922	5,879
1915	6,458	1923	23,194
1916	6,584	1924	34,679 ✓
1917	8,572	1925	19,710
1918	4,756	1926	18,456

³¹ Taken from annual reports of the Commissioner-General of Immigration.

During the 12 years 1911 to 1922, inclusive, the annual average number of desertions was 8,573, and this period included the abnormal years of 1920 and 1921, when ocean transportation suffered what almost amounted to a collapse. In the two fiscal years referred to hundreds upon hundreds of ocean-going ships of all nations were tied up in harbors of the United States and other countries with the result that thousands of alien seamen were left stranded in our ports. In view of this it is hardly fair to count the excessive numbers in these two years as desertions, for many thousands of them were simply stranded here, and, as stated in the annual report for 1922, the Immigration Bureau was deluged with requests to deport or in some way to return them to their home countries.

This has not been the situation since then, however, and the only reasonable explanation of the great increase in desertions is that men who could not come into the country in a legal way, largely because of quota restrictions, signed on vessels in foreign ports as seamen and in that guise gained admission by taking illegal advantage of the shore liberty which the seaman's act rightfully accords to all bona fide followers of the sea.

"To construct legislation which will enable the Immigration Service to prevent the unlawful entry of aliens in the guise of seamen without interfering with the legal and inherent shore privileges of bona fide seamen is a difficult if not impossible task. It is hoped, however, that certain provisions of the immigration act of 1924, . . . will afford some relief in this regard. The evident purpose of this new legislation is to avoid infringement on the rights assured to bona fide seamen under the present seamen's act, but at the same time to make it possible to refuse shore privileges to intending immigrants who have taken this means of getting into the country. The hope of accomplishment lies in the authority given immigration officers to order the detention of pretending seamen on board vessels bringing them to a United States port and their deportation on the same vessel, the penalty for failure to so detain and deport

being fixed at \$1,000 for each alien seaman in respect of whom such failure occurs.

"The full effect of this provision of law cannot be foreseen, but the outlook is promising, and if its enforcement results in a more careful selection of crews in foreign ports with the purpose to avoid shipping men who are immigrants instead of seamen, it is believed that much good will be accomplished."³²

Section 23 places the burden of proof upon the alien to prove that he is not subject to exclusion under any provision of the immigration laws. In any deportation the burden of proof is also placed upon the alien to show that he entered the United States lawfully and is not for any cause subject to such deportation, although in presenting such proof he is entitled to the production of his immigration visa, if any, or other documents concerning his entry, in the custody of the Department of Labor.

The reason for this provision was stated in the report of the House Committee³³ as follows: "An alien seeking to enter the United States should not stand mute, but should assist the Government by showing admissibility if he can. No longer should admissibility be presumed until the Government can marshal its forces to prove inadmissibility. An alien remains within the country not by right, but by sufferance."

In referring to the standing mute of aliens the committee doubtless had in mind the important decision of the Circuit Court of Appeals for the Second Circuit in the case of an ex-president of Venezuela.³⁴

The Commissioner-General of Immigration in his report for 1919 called attention to the serious situation that ex-

³² Quoted from annual report of Commissioner-General of Immigration for 1924. For detailed information on the subject see Hearings of the House Committee on Immigration and Naturalization No. 69.1.5 January 21 and 22, 1926 on "Deportation of Alien Seamen." See also Supplementary Hearing No. 69.1.15, May 14, 1926. The deportation bill passed by the House June 7, 1926 contained provisions designed to remedy the evasions of these sections of the immigration law.

³³ House Report 350, 68th Congress, 1st Session.

³⁴ United States ex rel. Castro v. Williams, 203 Fed. 155.

isted in this respect. He stated: "A nation, no more than a man, should be placed in a position where an outside can demand the opening of the door without giving a full account of himself and showing that he is a fit person to enjoy the hospitality that he seeks."³⁵

Section 25 declares, "The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws. . . . An alien, although admissible under the provisions of this act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this act, and an alien, although admissible under the provisions of the Immigration laws other than this act, shall not be admitted to the United States if he is excluded by any of the provisions of this Act."

The bill passed the House on April 12 by a vote of 323 to 71 with 38 not voting. It passed the Senate April 18 by an even larger majority, the vote being 62 to 6 with 28 not voting. The President received it on May 19 and signed it on May 26, 1924. While an analysis of the vote reveals the fact that the fight was not a partisan one, 33 Republicans and 37 Democrats voting in the House against the bill becoming law, nevertheless the vote also reveals the fact that races will stick together and that the foreign element in this country has power in Congress. Representatives voting against the measure were from the following States: New York, 24; New Jersey, 9; Massachusetts, 8; Pennsylvania and Illinois, 6 each; Connecticut, 5; Rhode Island and Michigan, 3 each; while the other votes were scattered.

The population in four of these states according to the census of 1920 was as follows:

NEW YORK	
Total Population	10,385,227
Native born of native parents	3,668,266
NEW JERSEY	
Total Population	3,155,900
Native born of native parents	1,212,675

³⁵ Page 290.

MASSACHUSETTS

Total Population	3,852,356
Native born of native parents	1,230,773

CONNECTICUT

Total Population	1,380,631
Native born of native parents	449,206

Nearly one-half of the no votes came from five cities—namely, New York, Chicago, Boston, Cleveland and Detroit. In three of these five—New York, Chicago, and Cleveland—races of south and east Europe now are the dominant foreign-born nationalities. In Detroit the Poles have reached second place; in Boston, Russians and Italians are steadily displacing the Irish. The most interesting fact, perhaps, is that eighteen of the no votes came from New York City, where only one person in five is native born of native parents.

According to Congressman Albert Johnson, the sources of opposition were and still are: “(1) Those who believe that the law is not sufficiently restrictive. For the most part this opposition was not a stumbling block.

“(2) Those who believe that the law does not admit enough common laborers to do the rough work of the United States.

“(3) Those who, while pretending to favor restriction, really want anybody and everybody except the insane, the criminal and the diseased, so that they may proceed to reap dividends from their particular lines of endeavor, whether the lines be mills, factories, steamships, newspapers of various languages, or the like, in addition to bondsmen, some lawyers, common crooks, and others who daily exploit the newly arrived alien.

“(4) Those of an international mind, who think that migrations should not be impeded, except possibly from China, Korea, Japan and India.

“(5) Those who for religious, racial, or family reasons desire more of their own to be residents of the United States. This source of opposition was and is very great,

coming chiefly from the Jewish, Italian and Catholic elements in our country.

“(6) Those who have been led to believe that the United States can go throughout the world handpicking brick layers here, plasterers there, gardeners elsewhere and farmers at another place, and bring them, without thought of families, to our States; in other words, selection, distribution and supervision.”³⁶

³⁶ See Fairchild, *Immigration*, rev. ed., pp. 434-450 for the argument used by the opponents of restriction.

CHAPTER VIII

BACK TO 1890¹

THE history and characteristics of the "old" and the "new" immigration—The Italian immigrants—The Slavs—The Russian immigrants—The Jewish immigration—Views of various authorities on immigration—The test of naturalization—The army tests—Report of Dr. H. H. Laughlin of the Carnegie Institute—Analysis of the quotas based on the census of 1890—The criticism of discrimination is without foundation—Census of 1890 creates equalization rather than discrimination—The National Origins Plan.

At the present time European immigration to the United States may be divided into two groups, the "old" and the "new." The "old" immigration has extended from the beginning of our colonial and national history to the present time and has been and still is derived chiefly from Great Britain and Ireland, Germany, Holland, and the Scandinavian countries. Since practically all the immigrants to 1890 belonged to this "old" immigration, they were predominantly Anglo-Saxon-Germanic in blood and Protestant in religion—of the same stock as that which originally settled the United States, wrote our Constitution and established our democratic institutions. The English, Dutch, Swedes, Germans, and even the Scotch-Irish, who constituted practically the entire immigration prior to 1890, were less than two thousand years ago one Germanic race in the forests surrounding the North Sea. Thus, being similar in blood and in political ideals, social training and economic background, this "old" immigration has merged with the native

¹In this chapter it is the purpose of the author merely to set forth and analyze the factors and views that have resulted in the opposition to the "new" immigration—views which controlled Congress in the drafting of the Act of 1924. It is not the author's purpose to judge as to the truthfulness of the facts set forth by those opposed to the "new" immigration.

stock fairly easily and rapidly. Assimilation has always been only a matter of time and this has been aided by the economic, social and political conditions of the country. Even though those already here objected at times to other coming in, yet once in they have soon become Americans so assimilated as to be indistinguishable from the natives for this old immigration has consisted almost wholly of families who have come to this country with the full intention of making it their home and of becoming American citizens. It was this immigration that aided so much in the development of agriculture in the great Central West and in the construction of our incomparable transportation system. Furthermore, in comparison with the recent "new immigration, it has always been small in volume, while the abundance of free land in the past, our need of pioneer and the willingness of these "old" type immigrants to go into the West and settle on the land, prevented the rise of many serious problems.

In the period centering about the year 1880, and in particular in the decade 1880-1890, there was a distinct shift in the immigration movement. Whereas before 1890 most of our immigrants were Anglo-Saxons and Teutons from Northern Europe, since 1890 and prior to the quota legislation in 1924 the great majority were members of the Mediterranean and Slavic races from Southern, Eastern and Southeastern Europe. The great bulk of this "new" immigration has its sources in Russia, Poland, Austria-Hungary, Greece, Turkey, Italy, and the Balkan countries. It is this "new" immigration which constitutes *the* immigration problem of *today*. Its solution challenged our attention.

That such a change has occurred can be clearly indicated by figures.

The total number of immigrants into the United States from Western Europe between 1871 and 1880 was 2,080,266 while the total from southern and eastern Europe was only 181,638. But between 1901 and 1910 the total from the former was 2,007,119, while the number from southern and

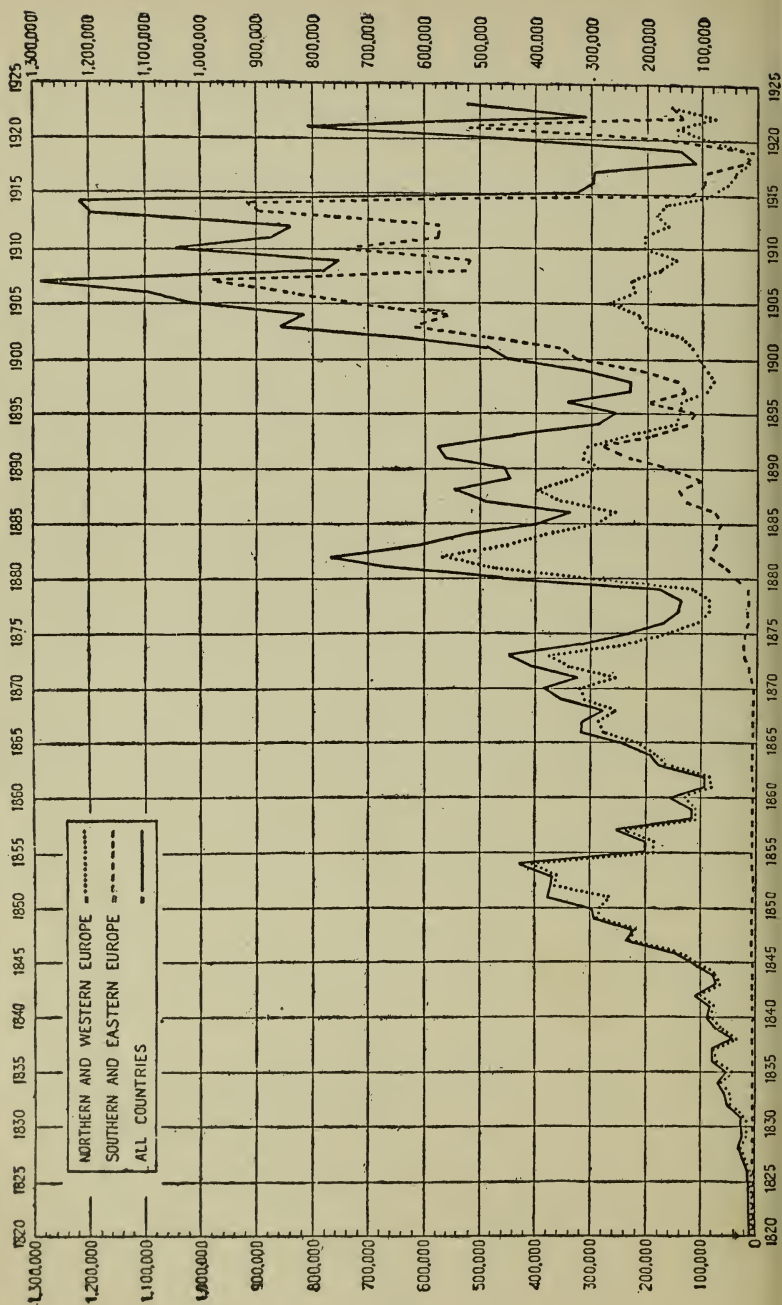
eastern Europe increased to 6,128,897. Thus, while immigration from western Europe was almost the same for the two decades, that from southern and eastern Europe increased from 181,000 to over 6,000,000. During the former period immigration from the latter portion constituted only 9 per cent of the total from Europe, while in the period from 1901 to 1910 it was about 75 per cent. The following table will illustrate the point still further, showing the gradual decrease of the old and the rapid increase of the new immigration:

Eight years (1882-1889):	
Old immigration	3,019,636
New immigration	<u>708,357</u>
Total.....	3,728,053
Seven years (1890-1896):	
Old immigration	1,652,797
New immigration	<u>1,194,189</u>
Total.....	2,846,986
Eighteen years (1897-1914):	
Old immigration	2,983,548
New immigration	<u>10,057,576</u>
Total.....	13,041,124
Total old immigration (1882-1914).....	7,566,041
Total new immigration (1882-1914).....	<u>11,960,122</u>
Total immigration from Europe, old and new (1882-1914)	19,526,163

The relative proportion of the old and new immigration groups is as follows: (Under the "old" immigration are classified all immigrants from the United Kingdom, Germany, France, Belgium, Denmark, Netherlands, Switzerland and Sweden, while under the "new" immigration are included those from Austria, Hungary, Bulgaria, Greece, Czechoslovakia, Italy, Yugoslavia, Poland, Russia, Finland, Spain, Portugal, Rumania and Turkey):

Decades	Old Immigration	New Immigration
1860-1870	98.4	1.6
1870-1880	91.6	8.4
1880-1890	80.2	19.8
1890-1900	48.4	51.6
1900-1910	23.3	76.7
1910-1920	22.8	77.2
1920-1922	36.8	63.2

IMMIGRATION TO THE UNITED STATES FROM NORTHERN AND WESTERN EUROPE AND SOUTHERN AND EASTERN EUROPE, 1820-1923 *



Under the 3 per cent law of 1921 the old immigration was entitled to 56.33 per cent, while the new immigration had 44.64 per cent. Under the new law of 1924 the respective percentages are 84.11 and 14.88. We shall discuss these facts later in the chapter. It is important to note here, however, that the quota laws have changed the relative proportions radically, so that now they are about what they were prior to 1890.

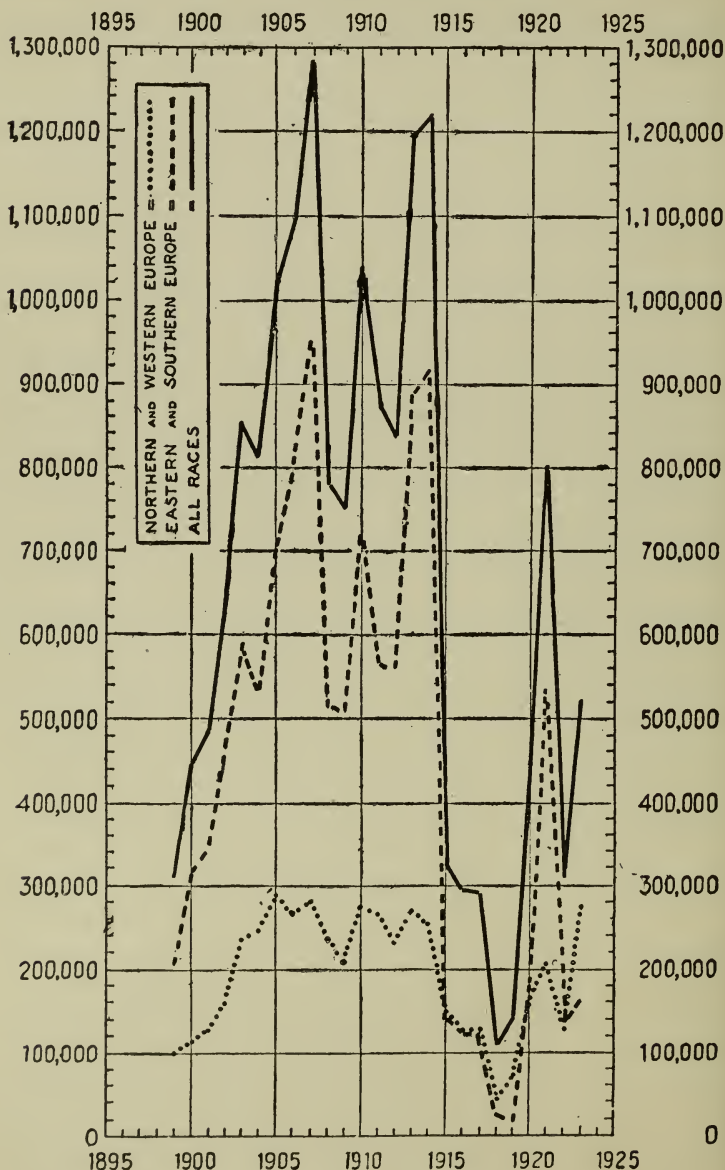
The summary of arrivals from 1819 to 1919 according to the sources of immigration were as follows:

Country	Total Immigration	Per cent. of Total
United Kingdom	8,205,675	24.7
Germany	5,494,539	16.6
Italy	4,100,740	12.4
Austria-Hungary	4,068,448	12.3
Russia	3,311,400	10.0
Scandinavia	2,134,414	6.4
Other Countries	5,884,887	17.6

It is to be noted that practically all the immigrants from Italy, Austria-Hungary and Russia have come in since 1890. Immigrants from these countries were practically negligible until 1882. Italy sent 32,160 in 1882, a maximum of 77,647 in 1903, and 29,391 in 1914. Russia sent 21,590 in 1882, a maximum of about 291,000 in 1913, and 255,660 in 1914. Austria-Hungary sent 27,935 in 1881, a maximum of 338,452 in 1907, and 278,152 in 1914. Scandinavia averaged approximately 50,000 per year from 1869 to 1914, with extremes of 11,274 in 1877 and 105,326 in 1882.

Indeed, more than half the approximate 35,000,000 immigrants who have come to our shores since 1820 have come within the last thirty-five years. The peak of immigration was reached in the decade preceding the World War when in the years 1905, 1906, 1907, 1910, 1913 and 1914 more than a million immigrants landed each year, while immigration averaged about 800,000 for each year not mentioned.

IMMIGRATION TO THE UNITED STATES OF NORTHERN AND WESTERN EUROPEAN
RACES AND SOUTHERN AND EASTERN EUROPEAN RACES, 1899 TO 1923 *



* From Eleventh Annual Report of the Secretary of Labor for the fiscal year ended June 30, 1923.

During the years 1899 to 1923 the total immigration may be summarized thus:

GENERAL RACE CLASSES.

[For years earlier than 1899 figures are not available.]

Year	Northern and western Europe	Eastern and southern Europe (including Hebrew)	Southern American	Oriental	Other races	All races
1899	100,187	203,890	1,791	5,070	777	311,715
1900	116,454	314,071	3,114	13,958	975	448,572
1901	128,924	348,100	2,330	7,768	796	487,918
1902	162,840	464,795	3,771	16,198	1,139	648,743
1903	236,105	589,708	5,905	22,880	2,448	857,046
1904	247,066	532,969	8,866	20,874	3,095	812,870
1905	288,295	705,475	10,692	18,066	3,971	1,026,499
1906	269,936	801,054	8,793	16,126	4,826	1,100,735
1907	281,322	956,019	8,007	32,705	7,296	1,285,349
1908	233,235	512,882	11,178	19,417	6,158	782,870
1909	209,418	510,168	20,885	5,464	5,851	751,786
1910	276,272	727,431	23,141	6,369	8,357	1,041,570
1911	269,701	567,431	24,992	6,407	10,056	878,587
1912	232,404	559,738	27,630	7,978	10,422	838,172
1913	271,419	889,627	16,587	10,576	9,683	1,191,892
1914	253,855	921,160	19,568	11,619	12,278	1,218,480
1915	142,168	148,798	16,885	11,306	7,543	326,700
1916	127,990	128,214	23,469	11,184	7,969	298,826
1917	122,927	127,545	23,822	11,031	10,078	295,403
1918	42,892	27,991	21,744	11,954	6,037	110,618
1919	71,202	17,628	34,328	11,898	6,076	141,132
1920	165,871	184,903	58,032	11,659	9,536	430,001
1921	206,995	537,144	36,004	11,962	13,123	805,228
1922	129,434	141,621	21,366	11,137	5,998	309,556
1923	274,507	162,695	67,513	9,986	8,218	522,919
Total.....	4,863,419	11,081,057	500,413	323,592	162,706	16,929,107

However, the net immigration was not so great by about a third, as may be seen from the table on page 210.

Let us note briefly the characteristics of the new immigrants. The immigrants from Italy have differed from those from Russia, Austria-Hungary and Ireland in that they have not been driven forth by the oppression of the dominant race, but as a result of the economic and political conditions of a united people. This does not exclude oppression as a cause of expatriation, but it transfers the oppression from that of one race to that of one class upon another. By far the larger portion of Italian immigration has come and still comes from the southern provinces and from Sicily, where the power of the landlords is greatest.

IMMIGRATION RESTRICTION

IMMIGRATION AND EMIGRATION, AND NET GAIN OR LOSS, 1908 TO 1923,
BY RACE*

(Figures for Emigration are not of Record for Earlier Period.)

Race	Immigra- tion	Emigra- tion	Net Gain	Per cent Emigra- tion is of Immigra- tion
African	103,045	22,478	80,567	22
Armenian	58,606	8,955	49,651	15
Bohemian and Moravian (Czech)	77,737	14,951	62,786	19
Bulgarian, Serbian and Mon- tenegrin	104,808	92,886	11,922	89
Chinese	36,693	47,607	— 10,914	130
Croatian and Slovenian.....	225,914	114,766	111,148	51
Cuban	41,439	24,037	17,402	58
Dalmatian, Bosnian, and Herzegovinian	30,690	8,904	21,786	29
Dutch and Flemish.....	141,064	24,903	116,161	18
East Indian	6,123	2,126	3,997	35
English	706,681	146,301	560,380	21
Finnish	105,342	30,890	74,452	29
French	304,240	62,538	241,702	21
German	669,564	119,554	550,010	18
Greek	366,454	168,847	197,607	46
Hebrew	958,642	52,034	906,608	5
Irish	432,668	46,211	386,457	11
Italian (North)	401,921	147,334	254,587	37
Italian (South)	1,624,353	969,754	654,599	60
Japanese	125,773	41,781	83,992	33
Korean	1,358	995	363	73
Lithuanian	137,716	34,605	103,111	25
Magyar	226,818	149,319	77,499	66
Mexican	356,536	68,713	287,823	19
Pacific Islands	192	58	134	30
Polish	788,957	318,210	470,747	40
Portuguese	128,527	39,527	89,000	31
Rumanian	95,689	63,126	32,563	66
Russian	210,321	110,282	100,039	52
Ruthenian (Russniak).....	171,823	28,996	142,827	17
Scandinavian	448,846	97,920	350,926	22
Scotch	301,075	38,600	262,475	13
Slovak	225,033	127,593	97,440	57
Spanish	153,218	61,086	92,132	40
Spanish American	30,408	11,488	18,920	38
Syrian	59,260	14,376	44,884	24
Turkish	13,147	11,330	1,817	86
Welsh	26,152	3,376	22,776	13
West Indian (except Cuban).	18,761	8,475	10,286	45
Other Peoples	34,146	15,608	18,538	46
Not Specified .....	.....	147,645	— 147,645	..
Total.....	9,949,740	3,498,185	6,451,555	35

* From Eleventh Annual Report of Secretary of Labor for the fiscal year ended June 30, 1923.

The prosperity of the landlords is extracted from the miserable wages of their laborers, whose cost of living does not, however, correspond with the low wages. In addition to the economic and political causes of pressure, there is another cause of a more profound nature, the rapid growth of population. The very poverty of Italy increases the tendency to a high birth-rate and the rate is highest in the very districts where illiteracy and poverty are greatest. Thus early marriages and large families are both a result and a cause of poverty. Emigration is the only immediate relief for such a condition. All other remedies which operate through raising the intelligence and the standards of living require years for appreciable results, but meanwhile the persistent birth-rate crowds new competitors into the new openings and multiplies the need of economic and political reforms before they can be put into effect. While emigration is thus a relief ready at hand, it is not a lessening of population, an important fact to be considered in our restriction of immigration. Emigration is also a means of revenue for the mother country. Many millions of dollars are sent back each year to families and relatives, while many immigrants return with what to them is a fortune in order to purchase and improve a farm and cottage for their declining years. It is for the most part these temporary immigrants into the United States whom it is impossible to assimilate or to Americanize.

There are two kinds of emigration from Italy, almost as entirely distinct from each other as the emigration from two separate nations. The north Italian is an educated, skilled artisan, coming from a manufacturing section and largely from the cities. He is Teutonic in blood and appearance. The South Italian is virtually an illiterate peasant from the great landed estates, with wages less than one-third that of his northern compatriot. The North Italians have not come to the United States in any considerable numbers. They have gone to Argentina, Uruguay, and Brazil in about the same numbers as the South

Italians have come to us.² The reason for this seems to be obvious. With their higher standards of living the North Italians have not desired to come here to compete with the low standards of the South Italians any more than American laborers or immigrants from Northern and Western Europe desire to or can compete with them. Thus, while the North Italians have gone to South America we have received the South Italians, "who are nearly the most illiterate of all immigrants at the present time, the most subservient to superiors, the lowest in their standards of living and at the same time the most industrious and thrifty of all common laborers."³

The immigration prior to the World War from that part of Europe which constituted the Austro-Hungarian Empire, unlike the Italians, was composed of a congeries of races and languages distinct from one another. With the breaking up of the Empire most of these races have been given each its own quota of immigrants into the United States. But the significance of this immigration is revealed only when we analyze it by races. Prior to the World War the race map of this Empire showed the most complicated social mosaic of all modern nations and as far as present day immigration is concerned the same situation exists despite the break up of the empire. Prior to the war there existed a juxtaposition of hostile races and a fixity of language held together only by the outside pressure of the powerful neighboring nations. This conflict of races aggravated the conditions which caused millions to emigrate. Not only were there five grand divisions of the human family—the German, the Slav, the Magyar, the Latin, and the Jew—within what was formerly Austria-Hungary, but these had to be sub-divided to really understand the situation. In the northern mountainous and hilly sections were the Slavic peoples, the Czechs, or Bohemians, with their closely related Moravians, and the Slavic Slovaks, Poles,

² See Commons, *Races and Immigrants in America* (new edition), p. 78. Chapter IV, "Nineteenth Century Additions," should be read in this connection.

³ Commons, *op. cit.*, p. 79.

and Ruthenians (Russniaks); while in the southern hills and along the Adriatic were other Slavs, the Croatians, Servians, Dalmatians, and Slovenians. Between these divisions were the two dominant races, the Magyars and the Germans. To the southwest was the Italian element and in the east were the Latinized Slavs, the Rumanians. In general the Slavs were the conquered peoples, being dominated by the Germans and Magyars. The northern Slavs were subject to Austria and Hungary. The Ruthenians suffered a double subjection, being serfs of their fellow-Slavs, the Poles, whom they hate. The Southern Slavs and Rumanians were subject to Hungary. In general it may be said that the Slavic immigrant furnishes a most difficult problem in assimilation due to the fact that his past, his customs and his inherited traditions make change slow.

"With all of this confusing medley of races, with its diversity of Greek and Roman Catholicism and Judaism, with its history of race oppression and hatred, with its almost universal serfdom and low standards of living, it is not surprising that in America the different races should group and settle together and often break out into factions and feuds wherever thrown together among us."⁴

For, from such a conglomeration of races it is impossible that political and social entanglements and difficulties should not arise. Coming in millions it has been impossible to even begin to assimilate and Americanize them. Practically the entire immigration has been that of peasants. As in other countries of low standards, the number of births in this section of Europe is large in proportion to the inhabitants. Thus poverty, ignorance, inequality and helplessness all play their part in producing a very high birth-rate. The result has been the emigration to America of many whose low standards of living, whose ignorance and racial hatreds have made it impossible for us under present conditions to assimilate and have marked them, in the minds of those who favor immigration restriction, along with the Italians and Russians, as undesirable immigrants.

⁴ Commons, *op. cit.*, p. 82.

The significant fact concerning Russian immigration is that less than five per cent of it has been Russian and the rest non-Russian. "The Russian peasant has been and probably is the most oppressed of the peasants of Europe. He is also probably the most ignorant and degraded. He has been so tied to the soil by his system of communism, his burden of taxes and debt and his subjection to autocratic rule, that he has been until recently immune to the fever of emigration."⁵ During the past few years in the face of starvation and famine millions have migrated to other parts of Europe. Millions more have wanted to do likewise. However, the races which have abandoned Russia in the last thirty years or more have been driven forth primarily because they refused to submit to the policy which would by force assimilate them to the language or religion of the dominant race, among whom have been the Jews, the Poles, the Lithuanians, the Finns, and some Germans who settled east of the Volga river over a century ago by invitation of Catherine II. The Poles and Lithuanians are Slavie peoples, while the Finns are a Teutonic people with a Mongol language. Due to changes resulting from the World War, each of these races with the exception of the Jewish, has its own quota of immigrants who may enter the United States. But the conditions in this part of Europe, which have marked these races as undesirable immigrants continue at the present time, and are similar to those which have created the belief that immigrants from what was formerly Austria-Hungary are undesirable.

Most of the present Jewish immigration is from Russia and what is not from there comes from adjoining territory which has been the case for thirty years or more. During American history Jewish immigration has come here from all countries of Europe, the first recorded immigration being that of Dutch Jews, driven from Brazil by the Portuguese and received by the Dutch government of New Amsterdam. Quite a large number of Portuguese and Spanish Jews have come to America by way of Holland

⁵ Commons, *op. cit.*, p. 87.

The great influx of German Jews followed the Napoleonic wars and reached its height at the middle of the century.

Under the Catholic polity following the Crusades the Jew had no rights and he could therefore gain protection only through the personal favor of emperor, king or feudal lord. The sovereigns of Europe protected the Jews in order to exact large sums of money from their profits as usurers and traders. The Jews, being thus utilized like sponges to draw from the subjects illicit taxes, became the object of persecution when the people gained power over their sovereigns. Only in Germany and other parts of the Holy Roman Empire where political confusion prevailed were the emperor and petty sovereigns able to continue their protection of the Jews. There was only one country, Poland, in the center of Europe, where the kings invited the Jews and hither the persecuted race fled from the Russians in the east and later from the Germans in the west. However, Poland was soon divided between Russia, Prussia and Austria and the persecutions continued. The popular hatred of the Jews in Europe has been stirred at times to a frenzy by yellow journals. There is reason to believe that in the past the Russian government has encouraged this popular antipathy toward the Jewish race for the sake of diverting the indignation of the masses from itself. It is certain that the attitude of the government has been most hostile toward the Jews. It is true, therefore, that they have been subject to much oppression in Russia in the last fifty years and since the World War their suffering has been great, although it has hardly been worse than that of the Armenians. It is partly due to these oppressions that so many Jews desire to come to America. However, the present quota law based on the census of 1890 has resulted in a drastic reduction of the Jewish immigration since it is largely from Russia and adjoining territory. It is for this reason that the Jews in America, especially in the eastern states, are for the most part bitterly opposed to the present quota legislation.*

*It is impossible here to study in detail the merits of the Jewish im-

Let us analyze the views of some of the leading authorities on immigration to see what they say concerning the "new" immigration.*

In his discussion of the change in the character of European immigration since 1890, Professor Commons says: "A line drawn across the Continent of Europe from north east to south west, separating the Scandinavian peninsula, the British Isles, Germany, and France from Russia, Austria-Hungary, Italy, and Turkey, separates countries not only of distinct races but also of distinct civilizations. It separates Protestant Europe from Catholic Europe; it separates countries of representative institutions and popular government from absolute monarchies; it separates lands where education is universal from lands where illiteracy predominates; it separates manufacturing countries, progressive agriculture, and skilled labor from primitive hand industries, backward agriculture, and unskilled labor; it separates an educated, thrifty peasantry, from a peasantry scarcely a single generation removed from serfdom; it separates Teutonic races from Latin, Slav, Semitic, and Mongolian races. When the sources of American immigration are shifted from the Western countries so nearly allied to our own, to Eastern countries so remote in the main attributes of Western civilization, the change is one that should challenge the attention of every citizen. Such a change has occurred."⁶

In his "History of the American People,"⁷ Woodrow Wilson stated: "The census of 1890 showed the population of the country increased to 62,622,250, an addition of 12,466,467 within the decade. Immigrants poured steadily in as before, but with an alteration of stock which students of affairs marked with uneasiness. Throughout the century

migration from Russia. Much literature, pro and con, exists on the subject. It is evident, however, that the present restrictions against them mark the end to the United States being an asylum for the oppressed of any and all countries.

* The author has tried to select statements which reflect the views and set forth the arguments used by the restrictionists in recent years, which had weight with Congress, without regard to the merits thereof.

⁶ Commons, *op. cit.*, pp. 69-70.

⁷ Vol. V, p. 212.

men of the sturdy stocks of the north of Europe had made up the main strain of foreign blood which was every year added to the vital working force of this country or else men of the Latin-Gallic stocks of France and northern Italy, but now there came multitudes of men of the lower class from the south of Italy and men of the meaner sort out of Hungary and Poland—men out of the ranks where there was neither skill nor energy nor any initiative of quick intelligence—and they came in numbers which increased from year to year, as if the countries of the south of Europe were disburdening themselves of the more sordid and hapless elements of their population, the men whose standards of life and of work were such as American workmen had never dreamed of hitherto.

“The people of the Pacific coast had clamored these many years against the admission of immigrants out of China, and in May, 1892, got at least what they wanted—a Federal statute which practically excluded from the United States all Chinese who had not already acquired the right of residence; and yet the Chinese were more to be desired, as workmen if not as citizens, than most of the coarse crew that came crowding in every year at the eastern ports.”

Speaking in the Senate ⁸ in favor of the literacy test, Mr. Elihu Root of New York State said: “I think there is a general and well founded feeling that we have been taking in immigrants from the Old World in recent years rather more rapidly than we have been assimilating them. They have been coming in rather more rapidly than they have been acquiring American habits of thought and the American spirit of government.

“The specific reason why I think this educational qualification will, as a whole, be a great advantage is that it will especially affect a very large immigration from southeastern Europe, which has in recent years furnished the unassimilated element, this element which is difficult for us to assimilate, and which when it gets here is cut off from the general sentiment and opinion of the country.”

⁸ April 18, 1912.

In his report to the Senate ⁹ recommending the emergency quota legislation of 1921, Senator Dillingham stated: "The new immigration coming almost wholly from southern and eastern Europe differs in character from the old immigration in that substantially 70 per cent of it, as a whole, consists of males, and substantially 86 per cent of the males are living single lives, being unmarried or having left their wives in Europe. They come to the United States not so much for the purpose of remaining here and making homes as to seek profitable employment at the seats of our great basic industries. . . .

"The committee does not look upon normal immigration from northern and western Europe as in any sense a problem. Such immigration has from the beginning been to a large extent one of families; they have come to the United States with the intention of remaining and making homes; they have distributed themselves throughout the United States, have become property owners, are interested in all local and national problems, and are also readily assimilated into the body of American citizenship. . . . Unlike the older immigration which distributed itself to every part of the country, entered every branch of activity and was, as a rule, quickly and thoroughly assimilated, the new immigration has consisted largely of single men, it has gone directly to the cities and to the manufacturing centers, and has remained there. It has moved in racial groups and to a large extent has maintained them, and compared with the older immigration it, as a rule, shows a slighter tendency to become American citizens and the number who have gone to the land have been negligible.

"The committee are of the opinion that in the present emergency a restriction should be applied to the type last described and are convinced that such restriction should be accomplished through some measure that will insure definite effectiveness."

In an article, "The Menace of the Open Door," Profes-

⁹ Senate Report No. 17, pp. 3-8, U. S. 67th Congress, 1st Session, April 28, 1921.

or E. A. Ross stated: "As a result of the growing heterogeneity society can scarcely make up its mind any more save on matters of such elemental appeal as fire protection, sanctity of property, good roads and public improvements. The 'interests', politicians, and the foreign nationalistic organizations play one element off against another so that we are not getting on as we should.

"Long ago Americans formed the habit of expecting their country to lead the world in popular progress. But we have had the mortification of seeing people after people pass ahead of us in such matters as education, status of women, sanitation, law enforcement, vice suppression, public morals, etc. In infant saving thirteen peoples are ahead of us. Such stalling and fumbling is the inevitable result of the cross purposes and confusion of ideas that result from excessive heterogeneity." ¹⁰

As early as 1891 Francis A. Walker wrote: "Foreign immigration into this country has, from the time it first assumed large proportions, amounted not to a reinforcement of our population, but a replacement of native by foreign stock. . . . The American shrank from the industrial competition thus thrust upon him. He was unwilling himself to engage in the lowest kind of day labor with these new elements of population; he was even more unwilling to bring sons and daughters into the world to enter into that competition. . . . The more rapidly foreigners came into the United States, the smaller was the rate of increase, not merely among the native population separately, but throughout the population of the country as a whole." ¹¹ The inevitable result has been foreign colonies and great numbers of unassimilated aliens in our midst.

In 1890 Professor R. M. Smith claimed that the outbreaks of anarchism and socialism in this country are due to the presence of unassimilated foreigners. He stated: "An indication of the unfortunate effect of introducing so many men of foreign birth and belief into our social body

¹⁰ *Overland Monthly*, February, 1922, pp. 27-29.

¹¹ Quoted in Commons, *op. cit.*, pp. 198-199.

is seen in the recent outbreaks of anarchism and socialism. These movements are always led and for the most part carried on by persons of foreign birth. Socialism and anarchism are not plants of American growth nor of Anglo-Saxon origin. They are not natural to the American mind; neither are they due to any deterioration in the condition of the laboring class in this country, and thus the fruit of despair and hopelessness in regard to the future. They are the importations of foreign agitators who come here for the purpose of making converts to their doctrines."¹²

Speaking in the House of Representatives, Congressman S. D. McReynolds stated:¹³ "The census of 1920 shows that there were nearly 14,000,000 of foreign birth in the United States. Statistics show that of all males over 21 years of age in the United States 22.1 per cent are of foreign birth, which is over one fifth of the total. Of course, much higher percentages are reported in certain sections of the country. In the Western Atlantic States—New York, New Jersey and Pennsylvania—35.4 per cent of the male population 21 years of age and over is foreign born. In the New England States, 38.2 per cent; in Massachusetts, 41.9 per cent; in Boston, 46.3 per cent; and in New York City, 53.4 per cent. And it is further estimated that 80 per cent of the population in New York City is either foreign born or of foreign parentage. Is not this condition alarming? . . .

"Suppose we concede, for the sake of argument, that those who come are as intelligent as we are; as moral as we are; as law-abiding as we are; but coming, as they do, with different environments, different ideas of government, different social relations and ideals, they will hold on to their ideals, spreading their doctrines in this country and undertaking to force the same upon us. They have never lived under a republic, and it is the history of most Latin countries that a republic cannot prevail, that they live greatly in revolution and fomentation. Any judge can constitute an alien an American citizen, but it takes a change of heart

¹² Smith, R. Mayo, *Emigration and Immigration*, p. 88.

¹³ April 8, 1924. Congressman McReynolds was a member of the House Committee on Immigration and Naturalization.

and mind to make an American. . . . An immigrant might be a good worker and a good citizen in his own country by intuition but not necessarily able to become a good American.

"One of the greatest menaces is the large number of newspapers published in this country in foreign languages. There are over 1,500 such papers published in the United States in more than 30 different languages. The constant use of the native language of itself has a tendency to prevent the amalgamation of and Americanization of foreigners, and furthermore, there was proof before your committee that many of these papers are disloyal to this Government, teaching loyalty to the government from which they come. In a single block in New York City it is said that 18 languages are spoken. In fact, this great city was referred to by one of foreign birth before your committee in the House as the greatest foreign city in the world. . . .

"The conditions existing in this country, as well as throughout Europe, are such that we must protect America from this foreign menace which is seeking to enter our country.

"Since the world's Great War, many dangerous and deadly doctrines have sprung up throughout Europe; governments have been changed over night, and in many instances the rights of property and freedom of speech and action are unknown. These same dangerous and deadly doctrines have been spread throughout this country, to a great extent by foreign propaganda and foreigners.

"Communists with headquarters in Russia are perfecting their organizations in this country, and to such an extent that not long since the Secretary of State, Mr. Hughes, saw fit to expose their intrigues in this country and claimed that the final purpose of these organizations was to overthrow the Government of the United States and plant a Red Flag upon the White House in Washington. Not long since Lenin, the great leader of the Communistic party, which controls Russia, died; and since that time over a thousand memorials have been held in this country for him. This

shows the dangers which we face and that it is up to the American people to see that America is kept American." ¹⁴

On March 12, 1924, there appeared in the Washington Post, an administration paper, an editorial headed "Speed Immigration Legislation." This editorial, among other things, said:

"In the earlier years of the Republic immigration was not at a rate that negatived absorption, and most of those who entered did so with intent and purpose to make themselves Americans, to attain the American viewpoint and to adopt American ideals and to adapt themselves to the customs and habits of mind of the nation. But in more recent years a large percentage of immigrants have come with differences. For decades now immigrants that have been pouring in have obviously been bent on seizing the opportunities offered by America but without disposition to adapt themselves to the American viewpoint and to adopt American ideals and concepts of government and citizenship in return. The record is crowded with instances in which groups of immigrants have stoutly resisted Americanism, have resented the suggestion that they acquire the language of the land, and have maintained their foreignisms. From their entrance great numbers of them have made it plain by their conduct that they propose merely to take what America has to give without giving what America should receive. At the present time, in certain areas, immigrants constitute a substantial percentage of the population, and drifting together and holding aloof from Americanization, hold themselves as foreigners in America."

Concerning the distribution of immigration in the United States, Professor Seager states:

"A complicating aspect of the growth of cities in the United States has been the large foreign element which most of them contain. In only twenty-eight of the sixty-eight cities having more than 100,000 inhabitants in 1920

¹⁴ The fear of Russian influence and radicalism in this country is still widespread, but is obviously overdrawn. Recent echoes of such fears have been heard in our relationship with Mexico and Central America in 1926-1927.

did native whites of native parentage constitute as much as one-half of the population. In nineteen of these cities, sixteen of which were in the New England and Middle Atlantic Divisions, over two-thirds of the population consisted of foreign born whites and their children. In twenty-one of them, including New Bedford (40 per cent), New York (35 per cent), Chicago (30 per cent), and Boston (32 per cent), the foreign-born alone constituted more than one-fourth of the population. This large foreign element in American municipalities has added materially to the economic and political difficulties with which these rapidly growing centers of population have had to contend. . . . The states in which the foreign born constituted over one-fourth of the population in 1920 were: Rhode Island, Massachusetts, New York and Connecticut. If to the foreign born in these states be added the native born of foreign parentage, the foreign element is even more conspicuous. Thus in 1920 the foreign born and the native born one or more of whose parents were foreign born, constituted in Rhode Island 70 per cent of the population; in Massachusetts and North Dakota 67 per cent; in Connecticut and Minnesota 65 per cent; and in New York 63 per cent."¹⁵

In an article on immigration¹⁶ by Dr. M. Victor Safford of the U. S. Public Health Service, we find the following remarks concerning the new immigration: "This immigration has been furnishing social and economic problems in the countries it has left. In our daily official duties we come to know as belonging to a normal human adult type the individual who cannot count to twenty every time correctly; who can tell the sum of two and two, but not of nine and six; name the days of the week, but not the months of the year; who knows that he has arrived at New York or Boston, as the case may be, but does not know the route he followed from his home or how long it took to reach here; who says he is destined to America, but has to

¹⁵ Seager, H. R., *Principles of Economics*, rev. ed., pp. 34-35.

¹⁶ Presented at the 15th International Congress on Hygiene and Demography, 1912. See also Safford, *Immigration Problems* (1925).

rely on showing a written address for further particulars; who swears he paid his own passage, but is unable to tell what it cost, and at the same time shows an order for railroad transportation to destination, prepaid in this country. . . . Temperamental qualities, lack of mechanical aptitude and of physical strength, impose limitations on their ability to enter the more desirable productive occupations to a far greater degree than is the case of the Western European immigrants. . . . Marked growth in the immigration of any particular nationality or race has always followed the discovery of its ability to compete in other occupations which have hitherto been carried on by older elements of our population. The entrance of a new immigrant type in such occupations has tended to be followed by the disappearance of the people previously employed in the occupations concerned. In so far as the previous labor supply may have been derived from an immigration of an older type, that immigration is checked."

In comparing our ability to assimilate the new with the old immigration Frederic J. Haskin has written:¹⁷ "The process is a longer and more tedious one, and one to which the immigrant does not lend himself as readily. . . . The immigrant from northwestern Europe quickly becomes a citizen. . . . Since three out of every four of our present-day (1912) immigrants come from countries where public education is unheard of, where popular participation in the affairs of the government is undreamed of, where dire poverty is the rule, it is apparent that the immigration problem is a grave one. And then, when we consider that two-thirds of this new immigration comes from the rural village and is dumped out upon our big centers of population, where vice surrounds it and fattens upon it, where it feels all of the worst effects of our civilization and none of its better effects, the wonder grows that the problem is not more serious than it is. But that it is a problem serious enough is recognized by all who have studied our immigration. While the new immigrant, with his willingness to

¹⁷ *The Immigrant*, pp. 29-35 (1913),

work in the dirt and filth and the dangers that are a concomitant, has made possible much of America's splendid industrial development, the very fact of his willingness to brave these things and to brave them at scant wages, has made him a liability to the nation. . . . Landing in a big city he is immediately beset by those who would exploit him. The toll that is taken of these immigrants is fearful. In the vast majority of cases their condition for the time being is worse in America than it was in their native lands. But they sacrifice themselves today in America in order that tomorrow at home they may live in comfort. But from this it is evident that their assimilation must be uncertain and their value to the body politic a doubtful thing."

Another test by which the advocates of immigration restriction undertook to determine whether the immigrant from northern and western Europe or the one from southern and eastern Europe can be more easily assimilated and is, therefore, more desirable as an immigrant was to see to what extent each has become fully naturalized. Figures bearing on this point which were used by the advocates of restriction are given in the following two tables, abstracted from the report of the United States Immigration Commission.

PERCENTAGE OF IMMIGRANTS FULLY NATURALIZED.¹⁸

(Males 21 years of age or over, resident 5 years or over in the U. S.)

"Old" Races		"New" Races	
Swiss	76.3%	Austrian	22.1%
Swedish	73.9%	Polish	19.1%
Welsh	73.0%	Russian	15.1%
Irish	70.2%	Slovenian	14.3%
German	69.6%	Slovak	12.1%
Scotch	64.1%	Magyar	10.8%
Danish	62.9%	Spanish	9.7%
Norwegian	55.6%	Ruthenian	8.7%
English	55.2%	Rumanian	8.6%
Dutch	51.8%	Greek	6.9%
Belgian	45.1%	Serbian	4.7%
French	40.9%	Portuguese	3.2%

¹⁸ Vol. I, p. 484 (1910).

➤ PERCENTAGE NATURALIZED AND HOLDING FIRST PAPERS.¹⁹

"Old" Races		"New" Races	
Swedish	92.3%	Hebrew (other than Russian)	61.6%
Swiss	92.1%	Finnish	61.2%
Welsh	87.0%	Hebrew, Russian	57.2%
Danish	86.8%	Austrian	53.1%
German	85.7%	Armenian	49.2%
Norwegian	85.6%	Italian, North	45.8%
Irish	82.6%	Bulgarian	36.8%
English	80.6%	Slovenian	35.8%
Dutch	79.9%	Polish	33.1%
Scotch	79.1%	Lithuanian	32.5%
Belgian	76.5%	Italian, South	30.1%
Bohemian and Moravian...	76.2%	Russian	28.0%
French	66.5%	Magyar	26.8%
Canadian (other than French)	56.7%	Slovak	22.8%
Canadian (French)	31.5%	Croatian	22.5%
Mexican	10.0%	Rumanian	21.9%
		Syrian	20.7%
		Greek	20.2%
		Ruthenian	19.8%
		Spanish	13.6%
		Serbian	12.8%
		Cuban	12.1%
		Portuguese	5.5%

¹⁹ Vol. I, pp. 485-6.

According to the census of 1920 the following table shows the per cent of our foreign-born population who had become naturalized:

COUNTRY OF ORIGIN—PER CENT NATURALIZED.²⁰

Northern and Western Europe	Per Cent
Wales	72.9
Germany	72.8
Denmark	69.2
Sweden	69.0
Norway	67.3
Ireland	65.7
Switzerland	64.9
England	63.1
Scotland	60.9
Belgium and Luxemburg.....	60.8
France	56.7
Netherlands	56.0

²⁰ U. S. Census, 1920, Vol. II, p. 805.

COUNTRY OF ORIGIN—PER CENT NATURALIZED (*Continued*).

Southern and Eastern Europe	Per Cent
Czechoslovakia	45.8
Finland	41.3
Rumania	41.1
Russia	40.2
Austria	37.7
Hungary	29.1
Italy	28.1
Poland	28.0
Yugo-Slavia	25.2
Lithuania	25.6
Turkey in Europe.....	20.2
Greece	16.8
Portugal	16.4
Bulgaria	12.1
Spain	9.9
Albania	7.4
Naturalization of all foreign-born.....	47.2

It is obvious in any impartial study of the influence of foreign immigration on American laws, American institutions, American customs, and American civilization in general, that the facts disclosed by the above tables must be considered of the greatest importance. To study these figures is to see clearly why the advocates of restriction wanted to cut down the immigration from the southern and eastern Europe, for in not a single case in the above table for 1920 does the naturalization of the "new" immigration of any country reach 50 per cent.

These compilations of the Immigration Commission of 1907 and the United States census have been criticized by a number of students of the subject, including John P. Gavit, Professor Franz Boas,²¹ Henry J. Ford,²² George A. Schreiner²³ and others. In his book "Americans By Choice",²⁴ Gavit criticizes the conclusion drawn from these tables by the advocates of restriction.

He states: "To these reports is attributable almost entirely the familiar conventional generalization that there is a marked distinction in what might be called 'quality of

²¹ *American Mercury*, October, 1924.

²² *Ibid.*, September, 1924.

²³ *Ibid.*, December, 1924.

²⁴ Chapters VII and VIII.

assimilability' between the so-called 'old immigration' and the 'newer'. . . . Inasmuch also as this inference coincided with the general public impression and prejudice to precisely the same effect, it occurred to nobody to dispute or seriously to question their validity."

After discussing such factors as the "disparity in numbers among racial groups," "the length of residence," "language," "earning power," "civic and political interest," etc., he reaches the following conclusions, favorable to the "new" immigration.²⁵

"First. . . . If there is any substantial difference in 'quality of assimilability' between the 'older' races and the 'newer', it is in favor of the latter.

"Second, it is evident that such difference as exists among races is not an inherent racial quality, but a difference between the political, social, and economic conditions at the time of migration in the country of origin.

"Third, and broadly corollary, is the fact that the major, not to say exclusively, controlling factor in the political absorption of the immigrant is length of residence. The longer the individual lives in America the more likely he is to seek active membership therein. . . . Sixth, is the evident influence of social and economic conditions in this country as they practically affect the individual. . . . Racial groups show a slower desire for citizenship and a lower rate of naturalization while they are employed in the more poorly paid industries."

Very few students of immigration who are advocates of restriction maintain that there is any difference of inherent racial qualities between the old and the new immigration to this country, other things being equal, or that one nationality is "superior" to another. They have contended and still argue, however, that the new immigration is not as easily assimilated for the very reasons set forth by Gavit in his conclusions, since he grants that the other things are not equal.

The advocates of restriction argue that it is because the

²⁵ Pp. 252-4.

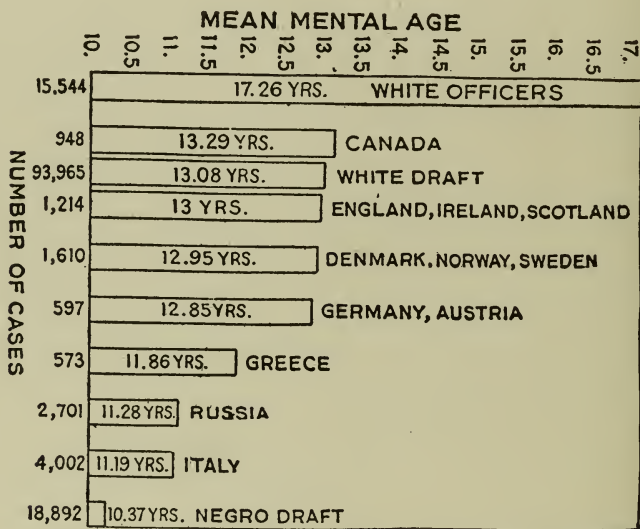
new immigration has come in such large numbers since 1890; because there exists such a contrast in the economic, political and social background in the countries of origin; because the new immigration has proved to be relatively unstable; and because it has tended of necessity to seek employment in the poorly paid industries demanding unskilled labor—for these very reasons we need restrictions against it. They readily grant that had the new immigration come in smaller numbers it is likely that no such problems of assimilation and naturalization would have come into existence. They contend further that the solution to the problem is not to pour more oil on the fire but to check the new immigration in order that we may take the steps necessary to eliminate the “foreign colonies” in our large cities by the admission to citizenship of truly assimilated Americans. Regardless of the contrasting interpretations of the data set forth in the above tables and the merits of the arguments, it is a fact beyond question that the above statistics were influential in crystallizing opinion against the new immigration.

During the World War something like one-sixth of our army was foreign-born. The mental tests which were given to nearly two million soldiers brought out some highly interesting and significant differences between these foreign-born soldiers in our army and the native-born Americans, and also between the various parts of the foreign-born contingent. Writing in the *Journal of Heredity*, Mr. Paul Popenoe stated: “If the mental age of 20 years be taken as the point attained by a very intelligent adult, and 16 years as the average normal adult of white American stock, the relative standing of the various groups is at once apparent. The officers form a group better than the average, as one would expect. . . .

“The Canadian contingent probably differs little in racial antecedents from the bulk of the old white American stock; and its average mental age of 13.29 years is not greatly different from that which the whole white draft would show, if the foreign-born elements were subtracted from it.

For the present purpose, it would perhaps not be far from right to class the Canadians as also native-born white Americans—as many of them in fact are.

“Passing this group the average soon begins to decline. Great Britain stands at thirteen years—and the inclusion of the Irish in this classification tends to pull down this

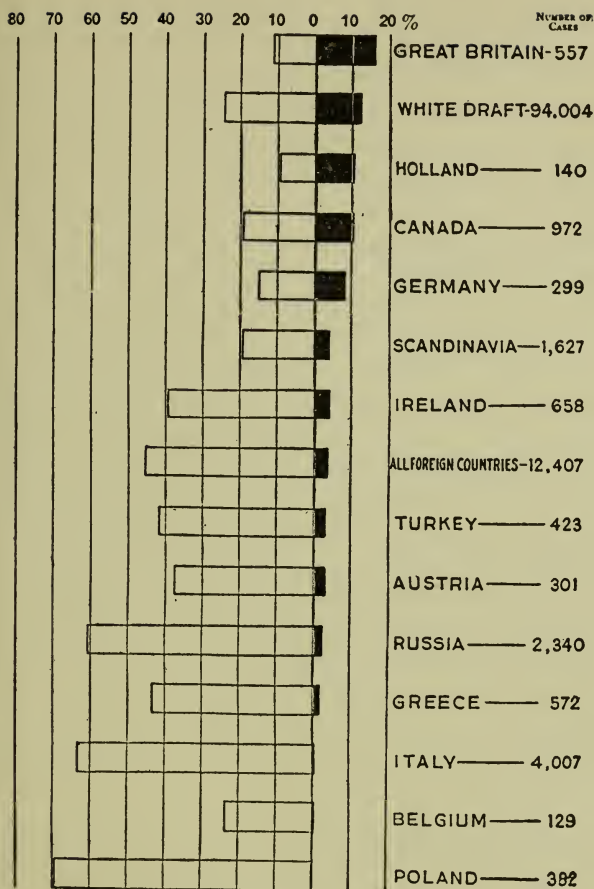


AVERAGE "MENTAL AGES" OF FOREIGN-BORN SOLDIERS

Attention is called to the extremely low score made by men in the American Army draft from certain foreign countries and to the fact that the average adult negro showed only the intelligence of the average ten-year-old white schoolboy. These figures applied to immigration would seem to have a very definite bearing on the new immigration laws limiting the relative number of immigrants from different countries.

average. If Ireland were excluded, England and Scotland together would make much the same sort of showing that Canada does.

“After the Scandinavian countries and the former ‘Central Empires’, which are but little below the American average, the drop becomes rapid. The younger men of Grecian birth measured below the average mentality of a twelve-year-old American school boy; the larger contin-



IMMIGRATION AND MENTALITY

Here the average mentality of the white male population of the United States is taken as zero. At the right of this line, in black, is shown the percentage of foreign-born drafted men above the American mental average; at the left, percentage below the American average.

gents of Russia and Italy fall still farther, until the Italians are not far above the level (10.37 years) of the American negro, or of a white adult who is of 'dull mentality'. . . .

"It is apparent that, aside from English-speaking countries, only Holland and Germany made contributions that averaged fairly well with the bulk of the American popula-

tion. And worst of all the proportion of immigrants from these countries during the last quarter of a century has been small. The great bulk of the recent immigration to the United States has been made up of Slavic and Mediterranean peoples; and the startlingly inferior quality of these immigrants, from a psychological point of view, has been rarely more strikingly shown than in these army returns. It is clear, as special students of immigration have long asserted, that the South Italians, Poles and Russians who have been imported in such large quantities during the past few decades, to furnish American industry with cheap manual labor, represent an extremely inferior racial contribution, measured by existing American standards. . .

. . . The general trend of these draft figures is clear, inescapable, and incontrovertible. It shows in a most striking way that the average of American immigrants during the last quarter of a century is below that of the native-born white population; and that the average of the countries which are sending over most of the immigrants, is even lower still. This last average is, indeed, so deplorably low that it is a fair and serious question whether the United States can eugenically afford to admit any more such average immigrants. Should not the American policy be that of admitting all who are superior to the American average, and no others?"

In an Article in the North American Review for May, 1922 on "Mental Tests for Immigrants," Dr. Arthur Sweeney analyzed the army tests, in order to discover the facts concerning the desirability of certain types of immigrants.²⁶ He wrote as follows:

"While we can measure objectively the physical qualifications of the immigrant, we have had no yardstick with which to form an accurate estimate of his intellectual and moral side, as well as those other intangible qualities which are essential to good citizenship.

²⁶ For another article on this subject see "Higher Mental and Physical Standards for Immigrants" by Professor Robert DeC. Ward in *Scientific Monthly*, November, 1924, Vol. IX, pp. 533-547.

"The psychological tests . . . have furnished us with the necessary yardstick to measure the desirability of the immigrant. The same test will reveal to us, with relative precision, those hidden qualities which will demonstrate the fitness of the intending immigrant for citizenship in this country, and will exclude those who are unfit. The Army tests rated men according to their mental age, and classified them into groups. The educational and industrial capacity of these groups was determined, and they were assigned to positions according to their ability. The performance of these men during their months of service on their various duties corresponded very nearly to their psychological ratings, and confirmed the accuracy and value of the tests. The tests revealed the intellectual endowment of the men, and also, to a large degree, determined the other qualities of a soldier, such as initiative, reliability, adaptability, and obedience. . . .

"Those examined for the Army were grouped according to their mental age as follows: D-, very inferior, 7 to 9 years; D, inferior, 9 to 11 years; C-, low average, 11 to 13 years; C, average, 13 to 14.5 years; C+, high average, 14.5 to 16 years; B, superior, 16 to 18 years; A, very superior, 18 + years.

"The need of some means of excluding the unfit that shall be more effective than past measures is forced upon us by the revelations of the Army examinations. In our Army 360,000 men of foreign birth were put through the test, with the startling result that 45 per cent were found to be below 11 years of mental age and were grouped in the inferior and very inferior classes. This fact is startling enough, but fades into insignificance when we interpret it as relating to the countries from which most of our immigrants come. - The table given below is self-explanatory. (See *Memoirs of National Academy of Sciences*, Vol. XV.)

"It will be seen that the percentage of foreign-born who are found to be in the D and D- classes, with a mental age of less than 11 years, is 45.6 per cent. Of the 360,000 recruits of foreign birth upon whose examination these fig-

	A	B	C +	C	C —	D	D —	D and D —	A and B
								<i>P. ct.</i>	<i>P. c</i>
Poland .....	..	0.5	3.1	19.5	7.3	43.5	26.4	69.9	0.4
Italy	0.2	.6	2.3	24.4	9.1	40.0	23.4	63.4	.8
Russia .....	.4	2.3	4.8	22.1	10.5	40.0	20.4	60.4	2.7
Greece .....	..	2.1	2.1	36.7	15.7	35.1	8.5	43.6	2.1
Turkey .....	.4	3.0	5.7	34.4	14.7	30.4	11.6	41.6	3.4
Ireland	1.2	2.9	8.4	29.0	18.6	26.2	13.2	39.4	4.1
Austria	1.7	1.7	6.7	32.3	20.0	27.5	10.0	37.5	3.4
Norway .....	.6	3.5	8.9	36.0	25.9	21.8	3.8	25.6	4.1
Belgium .....	..	.8	11.6	39.2	24.0	18.6	5.4	24.0	.8
Canada	3.3	7.2	15.4	25.8	28.4	15.4	4.1	19.5	10.5
Sweden	1.3	3.0	12.6	37.0	26.8	17.1	2.3	19.4	4.3
Germany	3.3	5.0	17.6	31.8	27.8	11.7	3.3	15.0	8.3
Scotland	4.8	8.2	25.4	19.2	28.8	10.9	2.7	13.6	13.0
Denmark .....	.6	4.8	16.2	32.4	33.0	12.8	.6	13.4	5.4
Holland	5.0	5.7	21.4	25.0	33.7	8.5	.7	9.2	10.7
England	5.6	14.1	24.0	12.4	35.4	6.0	2.7	8.7	19.7
Average foreign born	1.1	2.9	7.3	26.6	16.5	30.8	14.8	45.6	4.0
Average white draft	4.1	8.0	15.2	23.8	25.0	17.0	7.1	24.1	12.1

ures are based, 164,160 were of such low intelligence that they graded in occupation lower than the common laborer and were those whose work required constant supervision. In the Army they were not considered to be good soldier material, but were largely assigned to pioneer battalions for work that required muscular rather than mental strength.

"Equally interesting and suggestive is the low percentage of the higher intelligence group of A and B, reaching only 4 per cent. This group shows the small percentage of intelligent people of foreign birth as compared with the percentage of 12.1 found in the general white draft, composed of all recruits in the Army except the colored races. Certainly it is evident that the number of immigrants capable of understanding the duties and obligations, as well as the opportunity for progress, which our citizenship entails is alarmingly small.

"It will also be found that immigration from eastern and southern Europe is more undesirable than from other parts of that continent. We can gauge the desirability of im-

migrants by the relative proportion of those in A and B classes, and by the number in D and D minus. We can not seriously be opposed to immigrants from Great Britain, Holland, Canada, Germany, Denmark and Scandinavia, where the proportion of the higher groups is above 4 per cent and reaching a maximum of 19 per cent, as in the case of England. We can, however, strenuously object to immigration from Italy, with its proportion at the lower end of the scale of 63.4 per cent; of Russia with 60.4; of Poland with 69.9; of Greece with 43.6; and of Turkey with 41.6 per cent. The Slavic and Latin countries show a marked contrast in intelligence with the western and northern European group. . . .

"As a result of our previous negligence in selection of immigrants we have populated this country with hordes of the unfit, who are unadaptable to our requirements of citizenship. The census of 1920 reveals that out of a total white population of 94,820,915 the number born in foreign countries was 13,712,754. If we apply to this latter number the ratings as to intelligence found by the psychological test in the Army, 14.8 per cent of foreign-born being in D minus class, the number would be 2,029,484. Those rated as class D (30.1 per cent) would number 3,927,538. This brings the total of these two classes, who are rated as having a mental age of 11 years or less, to 5,957,026. It would be interesting if there were some figures showing what proportion of this large number took some part in industry and production, and what proportion were dependent, criminal, or worthless; but there are no present adequate means of determining these facts. The presumption being that the higher the intellectual status the more efficient the human machine, the inference follows that this large portion of our population are little fitted to work or vote, and tend to become burdens upon society, either as dependents or mis-demeanants. . . .

"We are being swamped with the offscourings of Europe. Those at the lower end of the intellectual scale have brought to us their social customs, their language, their political ideals. They cannot assimilate our ideals. Their

adaptability to their new surroundings is limited. They cannot become citizens in the highest meaning of that word. They cannot enter into the spirit of American life. They add little except numbers to the body politic. They add to the burdens of State and municipality, and render more difficult and complex the administration of law and order. . .

"We do not need the ignorant, the mentally feeble, the moron. We already suffer from the presence of too many whose low mentality leads them into pauperism, crime, sex offenses, and dependency. . . . We must forget those sentimental by-words, like 'a refuge for the oppressed of other nations,' unless we want to be oppressed by the burden of ignorance and degeneracy which such a catchword invites.

Another effort to use the army tests to explain the high scores of the older immigrants was made by C. C. Brigham.²⁷ In addition to vigorous criticism from K. Young,²⁸ M. Hexter and A. Myerson²⁹ launched an attack against the army tests but especially against the scientific character of Professor Brigham's work. They accuse him of rank prejudice and propagandizing intent. They criticize the argument that the tests measured native intelligence and claim that the speed factor was a handicap to the foreign born and that with increased length of residence the gain on the Alpha test is greater than the gain on the Beta test, thus showing the influence of education and familiarity with the culture of America.

Another attack against the arguments of the advocates of restriction who believe that the "old" immigration is more easily assimilated and hence is more desirable was made by W. Bagley.³⁰ He argued that a high correlation exists between the quality of the educational systems in given areas and the test achievements of men from the corresponding localities. Thus, he claims that it is education

²⁷ Brigham, C. C., *A Study of American Intelligence*.

²⁸ Young, K., *Science*, Vol. LVII, No. 1484, June 8, 1923, pp. 660-670.

²⁹ Hexter, M., and Myerson, A., "A Study in Probable Error," *Mental Hygiene*, Vol. VIII, January, 1924.

³⁰ Bagley, W., "The Army Tests and the Pro-Nordic Propaganda," *Ed Rev.*, April, 1924.

rather than pure native ability that is measured by mental tests. He believes, therefore, that in general in view of the possibility of unfair sampling and of the influence of cultural factors of the test scores, the superiority of the Nordic intelligence must be regarded as unproved.

As already indicated, very few of the advocates of restriction argue that the Nordic *rac*es are "superior" to those of Southern or Eastern Europe and hence most of them grant the soundness of such argument as that set forth by Bagley. Most advocates of restriction will concede that Professor Brigham, in his study referred to above, overlooked the sharp differentiation between the intelligence of "immigrant groups" and the intelligence of "races." They argue, however, that the lower scores on the intelligence tests by the more recent immigrants is a fact, although they concede that the reasons must be sought in factors related to the passage of time and virtually unrelated to race.³¹ They contend, however, that the existence of such factors justifies the restriction of the types or groups of immigrants which have come from Southern and Eastern Europe in recent years.

C. Kirkpatrick³² is of the opinion that the studies dealing with the children of immigrants in the schools are far more significant than the results of the army tests given to adults. He points out that the studies of Young,³³ Murdock,³⁴ Feingold,³⁵ Brown,³⁶ Berry,³⁷ Pitner,³⁸ and Col-

³¹ For an excellent analysis of this view see Neifeld, M. R., "The Race Hypothesis," *American Journal of Sociology*, Vol. 32, pp. 423-432 (November, 1926).

³² Kirkpatrick, C., "Selective Immigration," *Journal of Social Forces*, Mar., 1925.

³³ Young, K., "Mental Differences in Certain Immigrant Groups," *University of Oregon Publication*, Vol. I, No. XI, July, 1922.

³⁴ Murdock, K., "Race Differences in New York City," *School and Society*, XI, 1920.

³⁵ Feingold, G. A., "Intelligence of the First Generation of Immigrant Groups," *Jr. Ed. Psych.*, Vol. XV, No. 2, p. 65 ff., Feb., 1924.

³⁶ Brown, G. L., "Intelligence as Related to Nationality," *Jr. Ed. Research*, Apr., 1922, pp. 324-327.

³⁷ Berry, C. S., "The Classification by Tests of Intelligence of Ten Thousand First Grade Pupils," *Jr. Ed. Research*, Oct., 1922.

³⁸ Pinter, R., and Keller, R., "Intelligence Tests of Foreign Children," *Jr. Ed. Psych.*, Aug., 1922, p. 214 ff.

vin,³⁹ for the most part show decided differences in the test achievement of children of different national groups although certain of the writers are inclined to feel that the language factor may have played a part, especially when comparisons are made with American children of American born parents.

He then states, "In general the showing of the recent immigrant stocks is unfavorable, although there are several exceptions. While important differences in the innate qualities of different national groups may, and very likely do exist, it must be pointed out that individual selection is better than group selection and it is this simple fact that was ignored by the enactors of the recent immigration law."⁴⁰

Referring to the Act of 1924 and the evidence on which it is based Woolston wrote thus:⁴¹ "Instead of specifying the qualities considered desirable the law favors those nations whose representatives we like, and debars others by general provisions. It seems to me that such procedure involves threefold error.

"First, it disregards the wide range of individual differences among the members of any group. . . .

"In the second place, such generalization tends to confuse racial traits and cultural development. . . .

"Confusion is worse confounded when both physical and mental development are identified with country of birth.

Bernard has written thus on the application of mental tests to racial groups.⁴² "The intelligence thus measured is only the acquired intelligence within the limits of inherited capacity and not the inherited capacity itself. The degree to which the actual indices of intelligence measured for a racial group approximates to the actual inherited capacity will depend on the environmental factors of home

³⁹ Colvin, S. S., and Allen, R. D., "Mental Tests and Linguistic Ability," *Jr. Ed. Psych.*, Vol. XIV, Jan., 1923, p. 1 ff.

⁴⁰ See also article by Mead, M., "The Methodology of Racial Testing," Vol. 31 (1925-6), *Amer. Journal of Sociology*, pp. 657-667.

⁴¹ Woolston, H., "Wanted—An Immigration Policy," *Journal of Social Forces*, Vol. 2 (1923-4), pp. 666-670.

⁴² Bernard, *Introduction to Social Psychology*, p. 224.

training, cultural contacts, motivation, opportunity, etc., available to the members of the group." ⁴³

From our discussion it seems possible to harmonize the views of those who favor restriction of immigration with the views of those who deny that one race is superior to another. The advocates of restriction can and should grant that some of their number drew unfortunate conclusions from the army tests. Yet it does not follow from granting the psychic equality of the races that our political opinions must change or that restriction of immigration is not justifiable. To disapprove the superiority of one race over another does not eliminate the necessity for the restriction of immigrants with a different cultural background. In other words, we have had to adopt political devices that will roughly admit immigrants in proportion to our ability to assimilate those with a different cultural development.

It would seem then that the value of the army tests is to be found in the evidence presented of the differences in cultural development of the "old" and the "new" immigration of today. On this basis it would seem that the "old" immigration is more desirable than the "new", being more easily assimilated because of a cultural background more nearly akin to our own.⁴⁴ Whether this view be accepted or not as being sound, yet it must be conceded that these army tests had great weight with Congress and helped to crystallize the sentiment that finally resulted in the enactment of the Immigration Act of 1924.

Dr. Harry H. Laughlin, of the Eugenics Record Office of the Carnegie Institute of Washington, who was appointed expert eugenics agent of the House Committee on Immigration, studied the biological aspects of immigration and made an "expert" analysis of the metal and the dross in America's modern melting pot. His report to the House Committee,

⁴³ For further references see Grant, *The Passing of the Great Race*; Boas, *The Mind of Primitive Man*; Kroeber and Waterman, *Source Book in Anthropology*, chapters 15-21; Park and Miller, *Old World Traits Transplanted*; Fairchild, *Immigration*, Ch. XX. A recent and interesting study is N. D. M. Hirsch's "A Study of Natio-Racial Mental Differences." See especially pp. 393-8 (1926).

⁴⁴ See Fairchild, *op. cit.*, pp. 451-453.

November 21, 1922, had such great influence that it is often considered the principal basis of the Act of 1924. It is necessary, therefore, to consider it in some detail.

An institutional survey was made to secure the facts concerning particular types of social degeneracy or inadequacy of the different racial stocks, or nativity groups. Having secured the facts in relation to the number of persons of each race or nativity group found in custodial institutions and listed under a specific diagnosis, and having previously worked out an expected or quota number for each such diagnostic and racial group, the next step was to compare the number expected with the number found.⁴⁵ In making such comparisons the divisor was always the number expected, or the quota, and the dividend was always the number actually found by the survey. The quotient was the quota fulfillment which was expressed in terms of per cent. Thus, if the quota fulfillment of a particular racial and diagnostic group is 100 per cent in the table below, it means that for this particular race, in reference to this particular type of degeneracy, the number found is exactly the same as the quota or the number expected. If, however, twice as many were found as were expected, then the quota fulfillment is 200 per cent. If, again, only one-half as many were found as were expected, the quota fulfillment is 50 per cent. Thus, regardless of the absolute numbers in the different racial and nativity groups in the whole population of the United States, it was possible to standardize and to compare the relative extreme degeneracy of a specific type among the several racial and nativity groups.

To be specific, according to the census of 1910 there were 1,343,125 persons of Italian birth in the United States. This group constituted 1.46 per cent of the whole population of the United States at that time. Consequently, if the Italians in the United States were equally as susceptible as all other nativity groups to insanity, of the type which we institutionalize in this country, we should expect 1.46

⁴⁵ See Chapter II, pp. 55-56, for the use of such a method prior to 1850 by Senator Clemens of Alabama.

per cent of the inmates in all our hospitals for the insane in the United States to be of Italian birth. In the 93 hospitals for the insane which were covered by Dr. Laughlin's survey there were 84,106 inmates. The Italian quota was 1.46 per cent of 84,106, or 1,228, which was the number to be expected. The actual survey found 1,938 persons of Italian birth in the hospitals for the insane, which was 2.30 per cent instead of the expected 1.46 per cent. Dividing the number found by the number expected, the quota fulfillment was found to be 157.53 per cent, which means that the Italians fulfilled their quota a little more than one and a half times in contributing inmates to the hospitals for the insane.

Granting the soundness of such a method, for the sake of argument, the logical conclusion to be drawn from such statistics would seem to be that the differences in institutional ratios, by races and nativity groups, found by these studies represent real differences in social values, which represent, in turn, according to Dr. Laughlin, real differences in the inborn values of the family stocks from which the particular inmates have sprung. If this be true, then it would seem that the advocates of restriction were and are right in taking into consideration the stock from which the immigrant springs when drafting our restrictive laws on immigration.

This explanation of the methods used to get the results indicated in the table on page 242 should enable us to properly interpret the facts stated therein.

In the summary of all types of socially inadequate the following facts were emphasized by the restrictionists:

- (1) the per cent for the total native white was 91.89,—less than what was expected.
- (2) For the total foreign stock it was 125.79 per cent.
- (3) For northwestern Europe it was 130.42 per cent,
- (4) while for Southern and Eastern Europe it was 143.24 per cent.

The percentage for northwestern Europe was as high as it is due to the Irish immigration, whose quota was found to be 208.84. The quotas for all of the other countries that constitute Northwestern Europe were much lower than the

Nativity group or country of birth	1. Feeble-minded			2. Insane			3. Criminalistic			4. Epileptic	5. Tuberculous	6. Blind	7. Deaf	8. Deformed	9. Dependent			10. Summary: All
	Per ct.	All types	De-mentia praecox	Manic depressive	Senile	All types	Juvenile delinquency	Adult crime	All types	Per ct.	Per ct.	Per ct.	Per ct.	Per ct.	Per ct.	Per ct.	Per ct.	Per ct.
1. All groups and countries	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
2. Native white, both parents native born	124.93	125.82	81.97	86.10	81.96	82.60	101.14	80.47	86.55	118.71	98.68	130.52	119.25	129.42	121.16	99.90	103.48	91.89
3. Native white, mixed parents	29.80	31.91	231.76	193.06	229.92	225.76	52.46	100.60	86.44	71.65	133.29	10.98	14.88	12.24	2.76	165.14	137.78	145.75
4. Native white, both parents foreign born	.....	190.27	.....	.....	.....	103.90	139.17	105.76	115.58	200.00	122.98	81.29	75.83	145.45	105.56	101.00	101.77	116.65
5. Total native white	124.93	125.82	81.97	86.10	81.96	82.60	101.14	80.47	86.55	118.71	98.68	130.52	119.25	129.42	121.16	99.90	103.48	91.89
6. Foreign born white	29.80	31.91	231.76	193.06	229.92	225.76	52.46	100.60	86.44	71.65	133.29	10.98	14.88	12.24	2.76	165.14	137.78	145.75
7. Total foreign white stock	.....	114.76	.....	.....	.....	156.18	94.11	93.57	93.73	138.58	127.28	42.53	53.16	178.06	47.83	130.72	116.76	125.79
8. Negro, all percentage.	25.43	16.32	45.27	67.38	46.33	52.49	143.01	234.86	207.85	12.16	39.85	5.49	83.64	16.67	70.41	16.11	25.27	93.30
9. Indian, Chinese, Japanese, etc.	7.69	15.71	53.10	130.29	120.00	47.94	426.19	104.93	198.95	10.71	677.78	163.64	52.17	33.33	454.55	7.27	81.82	123.86
10. Europe	30.41	26.91	242.26	195.39	224.41	198.43	32.84	97.16	83.85	85.34	119.89	13.49	16.78	21.05	1.28	175.08	156.76	138.94
11. Northwestern Europe	24.06	18.98	221.45	185.65	311.48	198.36	9.52	45.38	37.97	80.36	94.08	8.33	11.49	.....	.....	261.29	233.81	130.42
12. Great Britain	24.14	27.27	136.41	160.60	304.55	156.81	11.02	52.54	43.96	145.56	72.09	7.69	15.62	.....	.....	243.07	217.65	112.96
13. Ireland	9.37	8.16	394.03	289.79	587.76	305.44	3.05	38.32	31.01	108.00	135.79	.....	.....	.....	.....	708.55	633.53	208.84
14. Germany	28.57	19.56	199.88	170.11	247.78	174.53	7.44	42.39	35.16	73.51	24.57	.....	6.15	.....	.....	134.16	120.06	107.35
15. Scandinavia	27.12	20.00	180.65	131.11	182.22	193.33	11.57	41.59	35.38	13.98	113.64	15.38	9.37	.....	.....	85.71	76.43	118.58
16. Netherlands	66.67	36.15	173.81	215.38	330.00	161.53	16.67	71.11	60.71	22.22	112.50	300.00	66.67	.....	.....	100.00	93.33	112.83
17. France	16.67	19.16	260.98	166.66	356.00	158.33	54.55	140.91	123.64	33.33	125.00	.....	100.00	.....	.....	276.92	240.00	133.33
18. Switzerland	16.67	8.46	62.79	184.61	80.00	69.23	25.00	28.26	27.59	44.44	11.11	.....	.....	.....	.....	121.43	106.25	53.84
19. Southern and Eastern Europe	32.92	33.02	261.94	197.81	81.87	188.50	62.70	161.65	141.25	89.04	148.02	20.87	22.31	50.00	2.98	55.91	50.39	143.24
20. Italy	20.31	25.34	220.21	194.52	106.12	157.53	62.31	259.44	218.49	83.84	123.97	42.86	8.57	66.67	11.11	43.71	40.48	144.52
21. Portugal	33.33	48.33	261.90	183.33	100.00	181.66	150.00	195.45	185.71	150.00	375.00	.....	.....	.....	.....	114.29	114.29	166.66
22. Spain	100.00	55.00	562.50	650.00	.....	415.00	200.00	775.00	680.00	100.00	300.00	.....	.....	.....	.....	.....	.....	490.00
23. Russia, Finland, and Poland	50.00	50.53	391.01	232.97	73.02	265.95	62.87	142.68	126.05	117.19	900.00	10.53	46.67	50.00	.....	80.00	71.89	133.51
24. Austria-Hungary	26.58	20.99	162.25	170.71	73.33	134.26	61.49	70.27	68.37	64.52	70.94	11.11	11.63	12.50	.....	28.34	25.24	91.51
25. All Balkan States	20.00	24.58	220.78	112.50	62.50	162.50	38.10	339.02	277.67	75.00	379.16	50.00	.....	300.00	.....	136.00	121.43	175.00
26. Greece	20.00	15.45	251.43	118.18	75.00	172.72	40.00	362.16	293.62	57.14	436.36	100.00	.....	.....	.....	172.73	146.15	190.90
27. Asia	22.22	14.50	163.64	100.00	28.57	130.00	38.89	305.63	251.69	50.00	184.62	50.00	.....	.....	.....	80.95	70.83	139.28
28. China	.....	.....	55.00	83.33	100.00	78.33	30.00	414.29	337.04	.....	.....	100.00	.....	.....	.....	33.33	28.57	125.23
29. Japan	.....	.....	16.67	28.57	.....	42.85	14.29	192.00	133.13	.....	40.00	.....	.....	.....	.....	.....	.....	57.81
30. Canada	15.79	22.90	120.52	129.00	134.09	124.42	27.35	73.45	63.49	75.56	107.06	.....	90.00	50.00	.....	.....	.....	130.00
31. West Indies	50.00	24.00	100.00	200.00	100.00	100.00	20.00	100.00	100.00	20.00	100.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00

quotas of the countries that make up Southern and Eastern Europe. These facts, together with those revealed by the table below, seem to indicate, according to Dr. Laughlin, that the immigrants from Northwestern Europe are far more desirable than the "new" immigrants from Southern and Eastern Europe.

The table below shows, by comparison of quota fulfillments the relation between the rate of incidence of each major type of social inadequacy, on the one hand, and the time of immigration of the immigrant stock on the other.

COMPARATIVE QUOTA FULFILLMENTS IN INADEQUACIES OF THE OLDER AND MORE RECENT IMMIGRANT STOCKS, EXCLUDING LIVING IMMIGRANTS.

	Older immigrant stock: Native born, both parents native born	More recent immigrant stock: Native born, one or both parents foreign born
1. Feeble-minded	107.70	173.75
2. Insane	73.27	107.03
3. Criminalistic	81.84	98.88
4. Epileptic	93.05	186.02
5. Tuberculous	89.40	122.98
6. Blind	155.64	64.90
7. Deaf	134.20	80.21
8. Deformed	66.21	294.96
9. Dependent	104.09	101.91
10. All types	84.33	111.69

The facts provided by this table seem to indicate that:

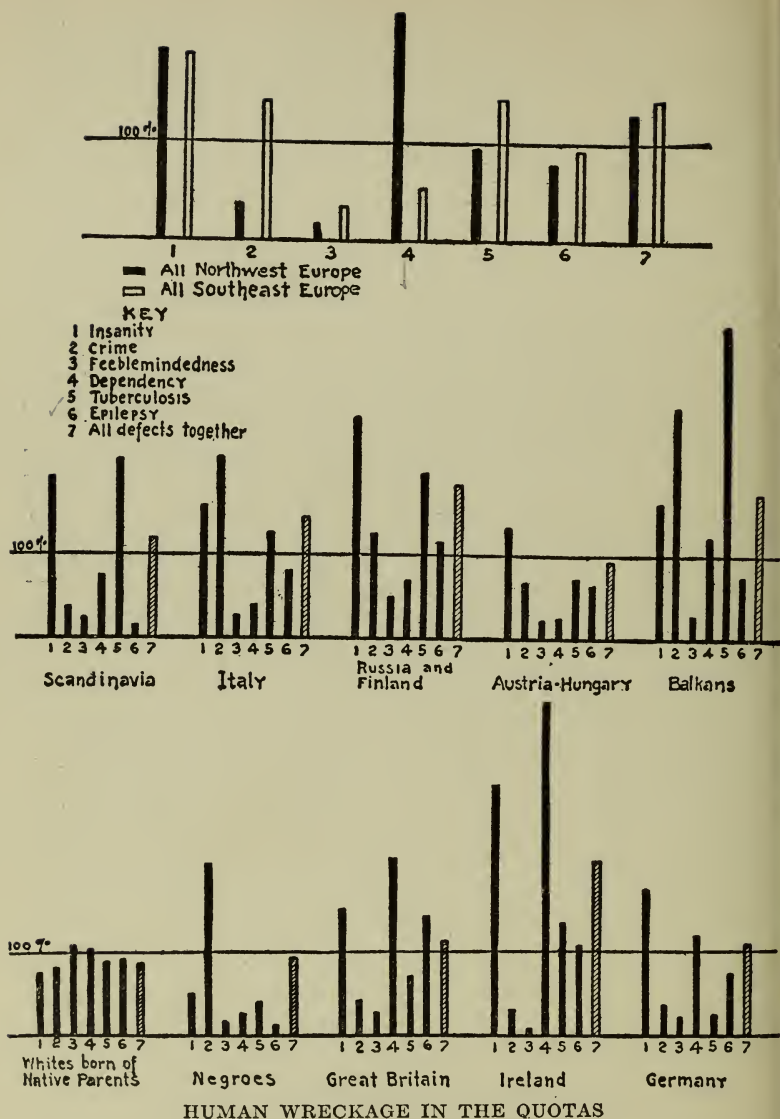
(a) in so far as (6) blindness and (7) deafness are concerned, recent immigrant stocks are much sounder than the older;

(b) in (9) dependency on the State the two time-groups are about even;

(c) in reference to (1) feeble-mindedness, (2) insanity, (3) crime, (4) epilepsy, (5) tuberculosis, and (8) deformity, the older immigrant stocks are vastly sounder than the recent.

The charts on page 244 taken together indicate the degree of "quota fulfillment" by each of the groups of immigrants studied in the above report.⁴⁶

⁴⁶These three charts are taken from the *Survey* for Dec. 15, 1923,



HUMAN WRECKAGE IN THE QUOTAS

These charts indicate the relative contribution by each of the numerically important groups of immigrants, studied by Laughlin, to the population of institutions for the defective and dependent. The column for dependency among Irish immigrants is limited by the depth of the chart; it should run one inch higher. The upper chart compares all the groups from Northwest Europe with all those from Southeast Europe for each of the seven categories of disability. The charts are based on the Laughlin data.

The classification below will throw more light on the subject:

- Insanity*
1. Ireland
 2. Russia-Finland
 3. Scandinavia

- Crime*
1. Balkans
 2. Italy
 3. Russia-Finland

- Feeble-mindedness*
1. Russia-Finland
 2. Great Britain
 3. Italy and Balkans

- Dependency*
1. Ireland
 2. Great Britain
 3. Balkans

- Tuberculosis*
1. Balkans
 2. Scandinavia
 3. Russia-Finland

- Epilepsy*
1. Great Britain
 2. Russia-Finland
 3. Ireland

- All Defects Together*
- | | | |
|-------------|--------------------|-------------|
| 1. Ireland. | 2. Russia-Finland. | 3. Balkans. |
|-------------|--------------------|-------------|

It is of interest to note that no nation that supplies the "old" immigration comes under "crime". That dependency is high among the "old" immigration would seem to be proof of its inability to compete successfully with the "new" immigration and would seem to establish the point that even on very low wages, due to the low standards of living, there is little dependency among the "new" immigrants. While dependency is bad, yet under existing circumstances low standards of living are worse, due to detrimental effects on American labor as well as for social reasons.

Concerning pauperism the following table from Dr. Laughlin's report presents some striking and possibly significant figures of the relative incidence of the tendency throughout those States of the Union where the mass of our foreign and unassimilated elements are located:

	Native-born paupers per 100,000 native born population	Foreign-born paupers per 100,000 foreign born population
New England	127	314
Middle Atlantic	78	241
East North Central.....	80	278

In this connection it is interesting to turn to the highly significant conclusions of Doctors May and Pollock, quoted from a New York hospital bulletin of April 12, 1912, abstracted by Dr. C. B. Davenport and quoted by Dr. Laughlin in his testimony in April, 1920, before the Committee on Immigration and Naturalization in the House of Representatives of the United States:

The conclusions to which Doctors May and Pollock have come are:

That the number of foreign-born insane in the State hospitals is steadily increasing.

That the foreign-born population of the State contributes a relatively much larger number of patients to the State hospital than the native born.

That although the rate of insanity among the Italians is low, this nationality contributes an unusually large proportion of patients to the State hospitals for the criminal insane.

That the average total hospital residence of the foreign-born insane patients is 9.85 years.

That the first admission of 1911 shows a rate of insanity 2.2 times as great among the foreign-born population of the State as among the native born.

That the rate of insanity among the foreign-born of New York City is 2.5 times that of the native born.

That about one-fifth of the foreign-born first admissions of 1911 entered hospitals before having been in the State five years.

That the larger part of the immigrants who are admitted to the State hospitals within five years after entering come from Austria-Hungary, Italy, and Russia, and the largest percentages of foreign-born illiterates are found among the same nationalities.

Dr. Wm. J. Mayo said in an address at the Boston City Hospital, November 14, 1923, before the new act was passed:

"The alien is a public health problem, just as he is a social problem, and the public hospital sees the dark side

of this picture. In the American of several generations, the doctrine of moral obligation has become thoroughly ingrained. In Southern Europe the Oriental point of view more or less prevails that no obligation which is not enforceable exists. The laxity of the conduct of the law in the United States, the slowness of Justice, and the extraordinary latitude allowed the offender against the community, give the criminal more than a sporting chance to escape punishment and have exposed the administrators of the law to the contempt of the class of offenders brought to us in recent years by immigration. And these are the people with whom our public hospitals are overcrowded. Our courts have been filled with alien law-breakers until the people have arisen in righteous indignation and reduced the number of immigrants to three per cent of the number already here from each country. If the percentage system of immigration in effect in 1890 could be reverted to, as has been advised, a much more desirable class of citizens would be brought from the countries that gave birth to the United States and its concept of government."

This report of Dr. Laughlin's thus claims to prove that the biological laboratory is a far more valuable basis for the study of immigration than are the improvisations of the sentimentalists. He argued that our alien population from northern Europe contributes far less in proportion to our "socially inadequate," whether the inadequacies be innate or not, than does that from Central and Mediterranean Europe. His report thus substantiated the conviction that was becoming more and more fixed in the minds of those favoring restriction that immigration from Northern and Western Europe, which for want of a better or more precise term is usually referred to as "Nordic," furnishes the best materials for building the American nation. By admitting strains far removed from the "Nordic" peoples, in race, in history, and in cultural ideals, the advocates of restriction argued that the United States has already tended to become in certain sections like Central Europe, a collection of unassimilable blocs, with all the social and

political problems that necessarily follow. Dr. Laughlin's investigations, therefore, supported the contention of the restrictionists that the great mistake of the last thirty years has been the admission of so many persons from Southern and Eastern Europe.*

The restrictionists have stated, however, that such reports unfavorable to the "new" immigration do not necessarily mark any nation or race as inferior to any other. They merely assert that this report and those related to it simply seem to establish the point that certain races are not as assimilable in America as others and that the "new" immigration is largely made up of such races.

One authority states it thus:⁴⁷ "It is unfortunate that attempts to select settlers should be regarded as a declaration of superiority by the nation attempting it. For practical reasons the great immigrant-receiving countries have found it necessary to decide what their dominant racial strain shall be. This does not mean an arrogant trampling underfoot of other strains, and should not be so regarded."

The report of the committee on selective immigration of the Eugenics Committee of the United States,⁴⁸ was to the effect that "It is not here a question of racial superiority of northwestern Europeans or of racial inferiority of southeastern Europeans. It is simply a question as to which of these two groups of aliens as a whole is better fitted by tradition, political background, customs, social organization, education and habits of thought to adjust itself to American institutions and to American economic and social conditions."

Dr. Laughlin's report has been subjected to vigorous criticisms. According to Professor Gillam an examination of Dr. Laughlin's data and methods of analysis proves his conclusion that "the recent immigrants present a higher percentage of inborn socially inadequate qualities than do

* See also Hirsch, N. D. M., *A Study of Natio-Racial Mental Differences*, for an excellent investigation of this problem.

⁴⁷ MacLean, *Modern Immigration*, p. 226.

⁴⁸ Hearings of the House Committee on Immigration, Dec. 26, 1923-Jan. 19, 1924, p. 837.

the older stocks" to be unfounded.⁴⁹ He questions whether the enumeration of defectives in institutions reveals the proportional occurrence of these inadequacies among the various race and nativity groups; whether the data really disclose significant differences in occurrence among the various races and nationalities; and finally, whether the inadequacies are really innate.

Professor Gillam stated:

"(1) His data are incomplete and statistically biased, as proved by the relatively large probable errors of the samples chosen.

"(2) The quotas for the various races and nationalities are derived without proper regard for the homogeneity of the facts compared.

"(3) The statistics disclose larger differential ratios between the older immigrant stocks and the natives than between the recent and older immigrant stocks.

"(4) Quotas for recent immigrant stocks are actually lower than the quotas for the older stocks, native and immigrant, in seven out of the nine inadequacies studied.

"(5) Finally, tests by the methods of correlation not only further prove the unreliability of Dr. Laughlin's data, they also remove any possible support for his assumption that social inadequacies are racially inborn values."

H. S. Jennings has stated⁵⁰ that even if Dr. Laughlin's data be accepted it is apparent that the alien stocks do not compare unfavorably with the native stocks in every trait. Furthermore, he points out that Ireland takes first place as a contributor to both insanity and dependency and to all defects taken together, while Austria-Hungary contributes fewer defectives than any of the European countries either North or South.

C. Kirkpatrick is of the opinion⁵¹ that "it is certainly true that since only a small proportion of the defectives in

⁴⁹ Gillam, J. M., "Statistics and the Immigration Problem," *American Journal of Sociology*, Vol. 30 (1924-25), pp. 29-48.

⁵⁰ Jennings, H. S., "Undesirable Aliens," *Survey*, Dec. 15, 1923.

⁵¹ Kirkpatrick, C., "Selective Immigration," *Journal of Social Forces*, March, 1925.

the United States are in institutions, it is questionable to reason from the proportions which have received institutional care to the characteristics of entire immigrant groups . . . The best of the Southern Europeans are far better than the poorest of the Northern Europeans and while the present law may have a certain biological validity, being based on group selection, it is a most clumsy instrument with which to obtain a desired end. The sheep may not be separated efficiently from the goats on the basis of geography."

Dr. Antonio Stella has criticized Dr. Laughlin's report in some detail.⁵² He argues that "only the negative features of immigration are presented. Not the slightest mention is made of the great incalculable contribution which the newer immigration has made towards the growth, development and cultural life of this country." He then argues that the figures in Dr. Laughlin's report do not correspond with our every-day experience, for the reason that some states do not provide institutional care for defectives to the extent that other states do so. The effect of this is "to make everything look worse than it really is for the newer immigrants," since these are for the most part found in states which have numerous institutions for defectives.

Other causes of error are pointed out to be as follows:

"(1) The failure to take into account the difference of the various prevailing age groups in the foreign and native population in computing the incidence of crime, feeble-mindedness and insanity, conditions in which age is a great factor.

"(2) The too small and arbitrarily selected number of institutions from which the returns were obtained. . . .

. . . (4) The total lack of information regarding the number of years these 'socially inadequate' immigrants have resided in America. . . .

"(5) More importance should have been given to the environmental causes of 'social inadequacies' as blindness,

⁵² Stella, A., *Some Aspects of Italian Immigration to the United States*, pp. 105-122.

nsanity, tuberculosis, etc. In many cases tuberculosis among immigrants is an occupational disease. ✓

"(6) The generalization of the term 'social inadequacy' is grossly misleading when the statistics are used to show the inferiority of one race to another, as to its qualifications for admission to America. . . .

". . . (8) The report, while showing a serious condition among the foreign born, does not prove that the 'recent immigrants from Southeastern Europe as a whole present a higher percentage of inborn socially inadequate qualities than do the older stocks'. If anything, these statistics would seem to show that some of the worst types of social inadequacy are found to be most prevalent among the immigrants from the North."

Unquestionably there is justification for such criticisms of Dr. Laughlin's report as those indicated above. Yet these criticisms hardly justify the conclusion of Dr. Stella that "the errors in the report are so serious as to render it valueless as a source of information." For, whether the inadequacies studied are innate to a group or race as a whole, or not—the facts seem to indicate the contrary—nevertheless, the concentration of the newer immigrants in certain sections of this country under different environmental conditions, socially, industrially and economically, has created problems which must be solved. Drastic restriction would seem to be the first step in such a solution. Dr. Laughlin's report has been of great value in concentrating attention on the existing conditions in those states in which the immigrants tend to settle. If it did no more than this, it has not proved worthless. But, whatever its merit, without doubt it had great weight with Congress in the enactment of the existing legislation.

Formulating their conclusions largely from these tests, reports and opinions of authorities on immigration, it seemed to the advocates of restriction that the solution to the problem was a more drastic restriction of the new immigration. Indeed, many felt that if this could be obtained, the problem would be largely solved, or could be

solved in time. For, as President Lowell of Harvard says:⁵³ "It is, indeed, largely a perception of the need of homogeneity, as a basis for popular government and the public opinion on which it rests, that justifies democracies in resisting the influx in great numbers of a widely different race." Professor Garner has pointed out that it is the duty of the State to secure ethnic or racial homogeneity in its population. He stated, "Ethnic homogeneity coupled with geographic unity are undoubtedly among the most powerful factors in maintaining political solidarity, and it should be the ambition of every State to organize itself so as to secure these elements of national strength and stability. . . . The State should strive by all proper means to render its population ethnically homogeneous and thereby remove one of the most potent sources of national discord. . . . Self-preservation is the first law of nature."⁵⁴

Yet, "of all the nations in the world which have first hand knowledge of large emigrant or immigrant movements, the United States is the one nation which has not regulated this movement of peoples to its own needs. Italy's admirable emigration laws are carefully framed to suit her own needs. Hungary's emigration system was planned to build up the port of Fiume, bring wealth back to Hungary and keep Hungarians in America from being naturalized. Bulgaria, on the other hand, wishing to keep her citizens at home, forbade steamship agents in the country. Rumania puts a secret mark on the passports of Jews which prevents them once they have left Rumania, from getting visés which will permit them to return to Rumania again. Poland facilitates the emigration of Jews, and hinders the emigration of the infinitely more desirable Polish peasant. All foreign countries develop laws which accrue to their own benefit and meet the peculiar needs of the different countries. For the United States to delay doing so is suicidal."⁵⁵

⁵³ Lowell, *Public Opinion and Popular Government*, p. 35.

⁵⁴ Garner, *Introduction to Political Science*, pp. 51-52.

⁵⁵ Roberts, *Why Europe Leaves Home*, p. 120.

In a brief magazine article, the author suggested as early as 1922 that a simple, effective solution to the problem would be to adopt the census of 1890 instead of 1910 or 1920 as the basis for permanent legislation and future percentage laws.⁵⁶ It is true that the three per cent law based on the census of 1910 was primarily quantitative, but it was nevertheless qualitative to the extent that it kept from our shores several millions of "undesirables" which this country could afford to do without. The one thing the three per cent law did was to prove that numerical limitation by a quota system is the most effective check we have been able to put on the tide of immigration. However, in the emergency, the census of 1910 was adopted merely because the facts desired were easily obtained on that basis. It was never intended to be the basis of a permanent percentage law. In Chapter VI we noted that the three per cent law would check the "new" immigration to some extent, yet such restriction was not based on historical facts. The two per cent law based on the census of 1890 limits qualitatively to a much higher degree as well as numerically within safe boundaries. It automatically closes the door to all but a few thousand "new" immigrants each year, yet it does not exclude to a detrimental point those immigrants from Northern and Western Europe who may desire to come and who are easily assimilated. It is a practical, American solution. It will give us time to educate and assimilate those aliens now here, a task of gigantic proportions, requiring many years. Such a provision would seem to be eminently fair and equitable, as we shall indicate in the conclusion of this chapter. Yet it raised a storm of protest among the nationals whose quotas it reduced. But this is the invariable effect of any legislative proposals that are frankly framed for the benefit of America and Americans rather than for Europe and Europeans. And yet, as in the case of any bill, the character of the opposition may be the strongest kind of evidence of intrinsic merit.

⁵⁶ Garis, R. L., "The Immigration Problem—A Simple American Solution," *Scribner's Magazine*, Sept., 1922.

The new immigration Act provided that the Secretary of State, the Secretary of Commerce, and the Secretary of Labor shall prepare a statement for the President of the United States showing the quota of each nationality entitled to immigration visas under the law.

Each of the Secretaries named appointed two representatives on an immigration quota committee to prepare the basic statistical material upon which such a report could be based. The work of this committee was begun May 31, 1924, and the report to the respective secretaries was dated June 19, 1924. The report of the immigration quota committee to the three secretaries was in part as follows:

The committee which you designated as your representatives to determine the population bases upon which to compute the quotas of immigrants from different nationalities, as provided for in the immigration act of 1924, have completed their task and have the honor to submit herewith a statement of the population bases representing the number of foreign-born individuals of each nationality resident in continental United States, as determined by the census of 1890.

In case of a country recognized by the United States but for which separate enumeration was not made in the census of 1890, the committee acting as your representatives have, as is required by section 12 of the immigration act, estimated the number of individuals born in such country and resident in continental United States in 1890. Similarly in the case of a colony or dependency existing before 1890 but for which a separate enumeration was not made in the census of 1890 and which was not included in the enumeration for the country to which such colony or dependency belonged, and in the case of territory administered under protectorate, the committee have estimated the number of individuals born in such colony, dependency, or territory and resident in continental United States in 1890, and have included the number in the population basis for the country to which such colony or dependency belongs or which administers such protectorate.

Also in the case of changes in political boundaries in foreign countries occurring subsequently to 1890 and resulting in the creation of new countries, the Governments of which are recognized by the United States, or in the establishment of self-governing dominions, or in the transfer of territory from one country to another, such transfer being recognized by the United States, or in the surrender by one country of territory, the transfer of which has not been recognized by the United States, or in the administration of territories under mandates, your committee, as the law requires, have estimated the number of individuals resident in continental United States in 1890 who were born within the area included in such new countries or self-governing dominions or in such territory as transferred or surrendered or administered under a mandate and have revised, so far as necessary, the population basis for each country involved in any such change of political boundary.

The classes of political divisions for which the committee have submitted population bases, are as follows:

- (1) Independent countries in existence in 1890.
- (2) Colonies, dependencies, or self-governing dominions for which separate enumeration was made in the census of 1890.
- (3) Independent countries which have come into existence since 1890.
- (4) Self-governing dominions coming into existence since 1890.
- (5) Surrendered territories coming into existence since 1890.
- (6) Territories administered under mandates.

Since the law provides that the minimum quota shall be 100, your committee have thought it unnecessary to estimate more exactly the number of persons born in a particular country or territory and resident in continental United States in 1890 in those cases where it was evident that the total number could not exceed 5,000 and therefore would not yield a quota of more than 100 on a 2 per cent basis.

On June 30 the three Secretaries transmitted to the President their report based upon the action of the quota committee and the President the same day issued the following proclamation:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas it is provided in the act of Congress approved May 26, 1924, entitled "An act to limit the immigration of aliens into the United States, and for other purposes" that—

"The annual quota of any nationality shall be two per centum of the number of foreign-born individuals of such nationality resident in continental United States as determined by the United States census of 1890, but the minimum quota of any nationality shall be 100 (Sec 11(a)).

"For the purposes of this Act nationality shall be determined by country by birth * * * (sec. 12 (a)).

"The Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly, shall, as soon as feasible after the enactment of this act, prepare a statement showing the number of individuals of the various nationalities resident in continental United States as determined by the United States census of 1890, which statement shall be the population basis for the purposes of subdivision (a) of section 11 (sec. 12(b)).

"Such officials shall, jointly, report annually to the President, the quota of each nationality under subdivision (a) of section 11, together with the statements, estimates, and revisions provided for in this section. The President shall proclaim and make known the quotas so reported. (sec. 12(e)).

And whereas satisfactory evidence has been presented to me that the Secretary of State, the Secretary of Commerce, and the Secretary of Labor, pursuant to the authority conferred upon them in the act of Congress

approved May 26, 1924, have made the statement and the quotas there provided.

Now, therefore, I, Calvin Coolidge, President of the United States America, acting under and by virtue of the power in me vested by the aforesaid act of Congress, do hereby proclaim and make known that and after July 1, 1924, and throughout the fiscal year 1924-1925, the quota of each nationality provided in said Act shall be as follows:

Country or area of birth	Quota 1924-1925
*Afghanistan	*100
Albania	100
Andorra	100
Arabian peninsula (1, 2).....	100
Armenia	124
Australia, including Papua, Tasmania, and all islands appertaining to Australia (3, 4).....	121
Austria	785
Belgium (5)	512
*Bhutan	*100
Bulgaria	100
Cameroon (proposed British mandate).....	100
Cameroon (French mandate).....	100
*China	*100
Czechoslovakia	3,073
Danzig, Free City of.....	228
Denmark (5, 6)	2,789
Egypt	100
Estonia	124
Ethiopia (Abyssinia)	100
Finland	471
France (1, 5, 6).....	3,954
Germany	51,227
Great Britain and Northern Ireland (1, 3, 5, 6).....	34,007
Greece	100
Hungary	473
Iceland	100
*India (3)	*100
Iraq (Mesopotamia)	100
Irish Free State (3).....	28,567
Italy, including Rhodes, Dodekanesia, and Castellorizzo (5)....	3,845
*Japan	*100
Latvia	142
Liberia	100
Liechtenstein	100
Lithuania	344
Luxemburg	100
Monaco	100
Morocco (French and Spanish Zones and Tangier).....	100
*Muscat (Oman)	*100
Nauru (proposed British mandate) (4).....	100
*Nepal	*100
Netherlands (1, 5, 6).....	1,648
New Zealand (including appertaining islands) (3, 4).....	100
Norway (5)	6,453
*New Guinea, and other Pacific Islands under proposed Australian mandate (4)	*100

Quota
1924-1925

Country or area of birth (Continued)

Palestine (with Trans-Jordan proposed British mandate)	100
Persia (1)	100
Poland	5,982
Portugal (1, 5)	503
Ruanda and Urundi (Belgian mandate)	100
Rumania	603
Russia, European and Asiatic (1)	2,248
Samoa, Western (4) (proposed mandate of New Zealand)	100
San Marino	100
Siam	*100
South Africa, Union of (3)	100
South West Africa (proposed mandate of Union of South Africa)	100
Spain (5)	131
Sweden	9,561
Switzerland	2,081
Syria and The Lebanon (French mandate)	100
Tanganyika (proposed British mandate)	100
Togoland (proposed British mandate)	100
Togoland (French mandate)	100
Turkey	100
*Yap and other Pacific islands (under Japanese mandate) (4)...	*100
Yugoslavia	671

* For each of the countries indicated by an asterisk (*) is established a nominal quota according to the minimum fixed by law. These nominal quotas, as in the case of all quotas hereby established, are available only for persons born within the respective countries who are eligible to citizenship in the United States and admissible under the immigration laws of the United States.

(1) (a) Persons born in the portions of Persia, Russia, or the Arabian peninsula situated within the Barred Zone, and who are admissible under the immigration laws of the United States as quota immigrants, will be charged to the quotas of these countries; and (b) persons born in the colonies, dependencies, or protectorates, or portions thereof, within the Barred Zone, of France, Great Britain, the Netherlands, or Portugal, who are admissible under the immigration laws of the United States as quota immigrants, will be charged to the quota of the country to which such colony or dependency belongs or by which it is administered as a protectorate.

(2) The quota area denominated "Arabian peninsula" consists of all territory except Muscat and Aden, situated in the portion of that peninsula and adjacent islands, to the southeast of Iraq, of Palestine with Trans-Jordan, and of Egypt.

(3) Quota immigrants born in the British self-governing dominions or in the Empire of India, will be charged to the appropriate quota rather than to that of Great Britain and Northern Ireland. There are no quota restrictions for Canada and Newfoundland.

(4) As shown on Chart No. 1262a, Hydrographic Office, United States Navy Department.

(5) Quota immigrants eligible to citizenship in the United States, born in a colony, dependency, or protectorate of any country to which a quota applies will be charged to the quota of that country.

(6) In contrast with the law of 1921, the Immigration Act of 1924 provides that persons born in the colonies or dependencies of European countries situated in Central America, South America, or the islands adjacent

to the American continents (except Newfoundland and islands pertaining to Newfoundland, Labrador and Canada), will be charged to the quota of the country to which such colony or dependency belongs.

GENERAL NOTE.—The immigration quotas assigned to the various countries and quota-areas should not be regarded as having any political significance whatever, or as involving recognition of new governments, or of new boundaries, or of transfers of territory except as the United States Government has already made such recognition in a formal and official manner.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this thirtieth day of June, in the year of our Lord one thousand nine hundred and twenty-four and of the independence of the United States of America the one hundred and forty-eighth.

(Signed) CALVIN COOLIDGE.

By the President:

CHARLES E. HUGHES,
Secretary of State.

This proclamation shows the number of aliens that could be admitted to the United States under the new quota law from quota territory. But it must not be assumed that the law or this proclamation places any limit on *total immigration*. There are exemptions in the quota law, and, furthermore, nearly all the American hemisphere is not subject to the quota law. What the total immigration will be cannot be determined until the end of each year. In Chapter VI we noted what actually happened as far as total immigration is concerned for the fiscal years 1921-1924.

The naturalization laws state that the provisions thereof "shall apply to aliens being free white persons, and to aliens of African nationality and to persons of African descent." Aliens of other races are not eligible to citizenship and hence, with certain exceptions, are barred from entering the United States under the new immigration law and do not fall within the quota. The nominal quota of 100 for certain countries can apply therefore only to persons of white or African race who were born in such countries.

In the table following a comparison is made of the quota for 1924-25 with the quota for 1923-24.

COMPARISON OF QUOTA FOR 1923-24 WITH QUOTA FOR 1924-25.

(The asterisk and numbers in parenthesis are explained above in the President's Proclamation)

No.	Country or area of birth	Quota 1923-24	Quota 1924-25
1.	*Afghanistan	0	100*
2.	Albania	288	100
3.	Andorra	(^a)	100
4.	Arabian peninsula (1, 2)	(^b)	100
5.	Armenia	230	124
6.	Australia, including Papua, Tasmania, and all islands appertaining to Australia (3, 4)	279	121
7.	Austria	7,342	785
8.	Belgium (5)	1,563	512
9.	*Bhutan	0	100*
10.	Bulgaria	302	100
11.	Cameroon (Proposed British Mandate)	(^c)	100
12.	Cameroon (French mandate)	(^c)	100
13.	*China	0	100*✓
14.	Czechoslovakia	14,357	3,073
15.	Danzig, Free City of	301	228
16.	Denmark (5, 6)	5,619	2,789
17.	Egypt	18	100
18.	Esthonia	1,348	124
19.	Ethiopia (Abyssinia)	(^c)	100
20.	Finland	3,921	471
21.	France (1, 5, 6)	5,729	3,954
22.	Germany	67,607	51,227
23.	Great Britain and Northern Ireland (1, 3, 5, 6) ..	^a 77,342	34,007
24.	Greece	3,063	100
25.	Hungary	5,747	473
26.	Iceland	75	100
27.	*India (3)	0	100*✓
28.	Iraq (Mesopotamia)	(^b)	100
29.	Irish Free State (3)	(^c)	28,567
30.	Italy, including Rhodes, Dodekanesia, and Cas- tellorizzo (5)	^r 42,128	3,845
31.	*Japan	0	100*✓
32.	Latvia	1,540	142
33.	Liberia	(^c)	100
34.	Liechtenstein	(^a)	100
35.	Lithuania	2,629	344
36.	Luxemburg	92	100
37.	Monaco	(^a)	100
38.	Morocco (French and Spanish Zones and Tan- gier)	(^c)	100
39.	*Muscat (Oman)	0	100*
40.	Nauru (proposed British mandate) (4)	(^e)	100
41.	*Nepal	0	100*✓
42.	Netherlands (1, 5, 6)	3,607	1,648
43.	New Zealand (including appertaining islands) (3, 4)	80	100
44.	Norway (5)	12,202	6,453
45.	*New Guinea, and other Pacific Islands under pro- posed Australian mandate (4)	0	100*

No.	Country or area of birth (Continued)	Quota	Quota
		1923-24	1924-25
46.	Palestine (with Trans-Jordan proposed British mandate)	57	100
47.	Persia (1)	(^b)	100
48.	Poland	30,977	5,982
49.	Portugal (1, 5)	2,465	503
50.	Ruanda and Urundi (Belgium mandate)	(^c)	100
51.	Rumania	7,419	603
✓ 52.	Russia, European and Asiatic (1)	24,405	2,248
53.	Samoa, Western (4) (proposed mandate of New Zealand)	(^e)	100
54.	San Marino	(^a)	100
55.	*Siam	0	100 ^a
56.	South Africa, Union of (3)	(^c)	100
57.	South West Africa (proposed mandate of Union of South Africa)	(^c)	100
58.	Spain (5)	912	131
59.	Sweden	20,042	9,561
60.	Switzerland	3,752	2,081
61.	Syria and The Lebanon (French mandate)	882	100
62.	Tanganyika (proposed British mandate)	(^c)	100
63.	Togoland (proposed British mandate)	(^c)	100
64.	Togoland (French mandate)	(^c)	100
65.	Turkey	2,654	100
✓ 66.	*Yap and other Pacific islands (under Japanese mandate) (4)	(^e)	100 ^a
67.	Yugoslavia	6,426	671
	Other Europe	86	...
	Other Asia	92	...
	Africa other than Egypt	104	...
	Atlantic islands (other than Azores, Canary Islands, Madeira Islands, and islands adjacent to American continents)	121	...
Total		357,803	164,667

^a Included in "Other Europe."

^b Included in "Other Asia."

^c Included in Africa.

^d For Great Britain and Ireland.

^e Included in Great Britain and Ireland.

^f Including Fiume, 71, but not the islands named, which are included in "Other Asia."

^g Included under title "New Zealand and Pacific Islands."

✓ Approximately 55,000 were admitted from quota countries, as exempt from the quota, after the quota was filled. This number was made up largely of aliens of classes which were entirely exempt from the quota as provided by law; others, such as returning residents, were exempt after a quota was exhausted; and finally considerable numbers

were admitted in conformity with court decisions. These decisions were reversed by the United States Supreme Court on May 26, 1924; but Congress, by joint resolution, subsequently legalized the status of these aliens as residents of the United States, as we noted in the previous chapter.

The quota law does not apply to natives of Canada and Newfoundland, Mexico, Central America, South America, and the West Indies; hence, practically all of the admissions from these countries were not chargeable to any quota. Aliens to the number of 80,682 who had previously been in the United States returned to the United States after an absence of less than one year; hence their last permanent place of residence was the United States.

Practically all of the admissions from China, Japan, and India in the year 1923-1924 were not chargeable to the quota of any country.

In comparing the quotas for the two years, as given above, an important fact to be noted is that many additional very small countries or territorial units are listed to have a minimum quota of 100, and certain groupings of the earlier year disappear.

It must be kept in mind that the immigration quota figures apply to country of birth. The table shows that the quota as a whole is reduced from 357,803 in 1923-1924 to 164,667 for the fiscal year, 1924-1925. In other words, the quota immigration is reduced by law more than one-half. However, we have noted already that this does not mean that total immigration will be reduced one-half, or even reduced at all, for the total immigration must include immigrants from countries not under the quota and also the non-quota immigrants who enter the United States.

Great Britain and Ireland and the Irish Free State combined are reduced from 77,342 to 66,574, a cut of 19 per cent. Germany is reduced from 67,607 to 51,227, or 24 per cent. Other countries of northern and western Europe get a considerable reduction, Norway's being from 12,202 to 6,453, while Sweden's is from 20,042 to 9,561. However,

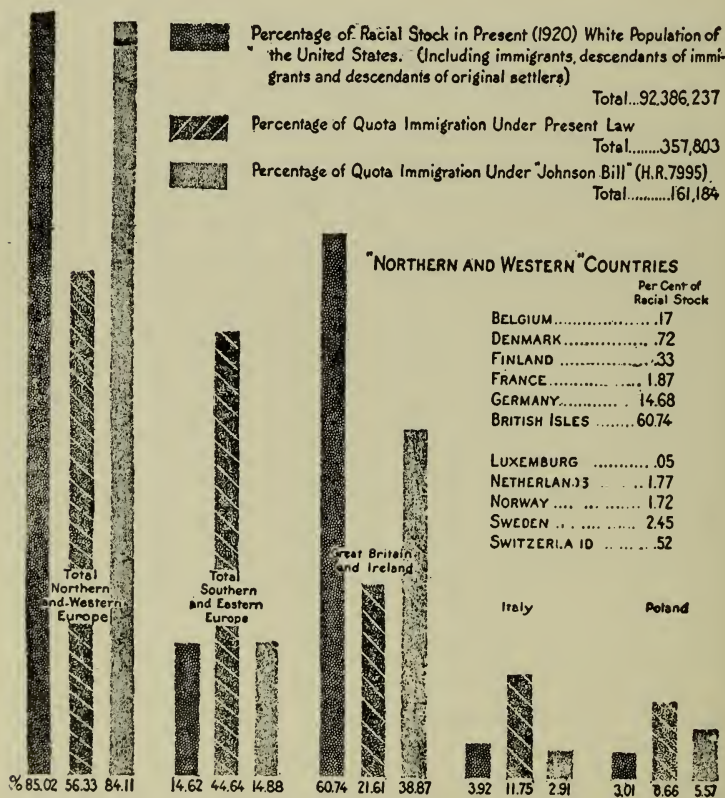
It is evident, therefore, that the adoption of the census of 1890 automatically reduced the "new" immigration, for at that time the movement of immigrants from southern and eastern Europe was just beginning to get under way. The charge was made many times, both in the House and in the Senate, that this change to the census of 1890 was unfair discrimination against the peoples from southern and eastern Europe and in favor of the peoples from northern and western Europe. It is true, as the figures show, that this change does make a very great shift in the proportion of our immigrants who are permitted to come from these two groups of countries. The opponents of the law assume that this constitutes discrimination. The advocates of restriction who favored the 1890 census plan argued that what they really demanded was the perpetuation of a very gross discrimination in favor of the countries of southern and eastern Europe, a discrimination against the countries of northern and western Europe, and, in effect, a discrimination against the United States.

Many of the restrictionists stated that the United States ought not to have to apologize for or explain any *actual* discrimination which it might think expedient for its own welfare and prosperity. They pointed out that virtually every other country controls emigration or immigration, as the case may be, in its own interests. They argued that immigration is a domestic question to be decided in the interests of the American people and not in the interests of any other people or nation and some of them went so far as to state that we may be as arbitrary as we please in restricting immigration.

However, according to their argument the Act of 1924, with the quotas based on the census of 1890, does not discriminate against the countries of southern and eastern Europe despite all the charges of those opposed to it. The present law creates *equalization rather than discrimination*. The census of 1890 as the quota basis gives proper representation without discrimination.

To support this argument they set forth the following

REMOVING THE "DISCRIMINATION" IN THE PRESENT "THREE PER CENT" IMMIGRATION LAW⁽¹⁾



The quotas as finally worked out make little or no change in the figures in this analysis, which was worked out by Congressman Vaile.

facts. The white population in the United States, according to the census of 1920, was a little over 92,386,000 people. The countries of northern and western Europe have contributed 85.02 per cent of this white population. Under the Act of 1921 (the 3 per cent law), they received only

56.33 per cent, while under the present law they are entitled to approximately 84.11 per cent of our annual quota immigration. On the other hand the countries of southern and eastern Europe have furnished only 14.62 per cent of our present white population. Under the Act of 1921 these countries were entitled to 44.64 per cent of our quota immigration, while under the present law their share is approximately 14.88 per cent, which is about a quarter of one per cent *more* than they deserve. Since the quotas for southern and eastern Europe are thus more than their per cent of the population of the United States, where is there discrimination? There being no discrimination, then have they any right to complain—unless they insist that it is the alien who is entitled to have the per cent? The census of 1910, which was the basis of the quotas in the Act of 1921, was not based on historical facts because it created a discrimination against the “old” immigrants who founded and developed this country.

On March 1, 1924 an editorial in the New York Times—published and controlled by Hon. Adolph Ochs, one of the greatest men of the Jewish race—stated:

“The census of 1910, as a matter of fact, favors the newer immigration at the expense of the old, and permits fewer representatives of those races which built up the United States during the last century to come in than of the recent arrivals.

“In formulating a permanent policy two considerations are of prime importance. The first is that the country has the right to say who shall and who shall not come in. It is not for any foreign country to determine our immigration policy. The second is that the basis of restriction must be chosen with a view not to the interests of any group or groups in this country, whether racial or religious, but rather with a view to the country’s best interests as a whole. The great test is assimilability. Will the newcomers fit into the American life readily? Is their culture sufficiently akin to our own to make it possible for them easily to take their place among us? There is no question of ‘superior’

A COMPARISON OF CONTRIBU
TIONS TO THE POPULATION
OF THE UNITED STATES
BY PRINCIPAL GEO-
GRAPHIC DIVISIONS

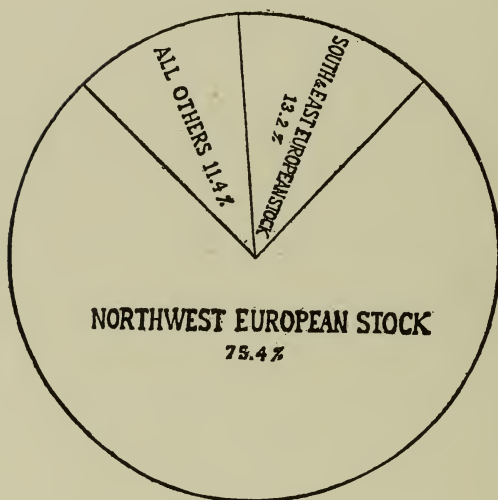


TABLE 1

NORTHWEST EUROPEAN STOCK in-
cludes besides the countries of
Northwest Europe, Canada, New-
foundland, Iceland, Australia and
New Zealand.

SOUTH & EAST EUROPEAN STOCK in-
cludes besides the countries of
South and East Europe, Hither
Asia and Africa.

ALL OTHERS include West Indies,
Mexico, Central and South Amer-
ica, together with the Colored
Races.

APPORTIONMENT OF QUOTAS
2% ON CENSUS OF 1890



TABLE 2

APPORTIONMENT OF QUOTAS
BY NATIONAL ORIGIN

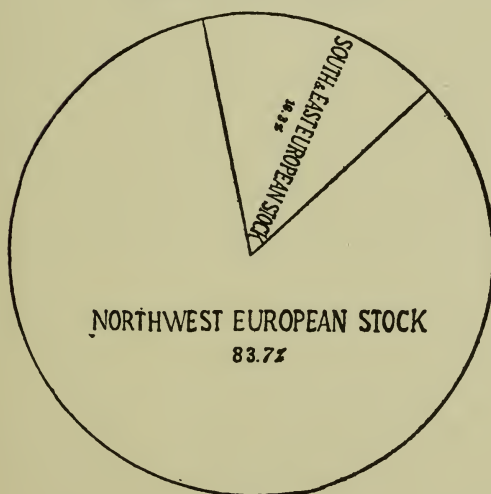


TABLE 3

These three tables are taken from pamphlet No. 202, *International Conciliation*, September, 1924 by John B. Trevor, "An Analysis of the American Immigration Act of 1924," published by the Carnegie Endowment for International Peace.

or 'inferior' races, or of 'Nordics', or of prejudice, or of racial egotism. Certain groups not only do not fuse easily, but consistently endeavor to keep alive their racial distinction when they settle among us. They perpetuate the 'hyphen' which is but another way of saying that they seek to create foreign blocs in our midst.

"A policy must be formed without discriminating unfairly against any given groups, but at the same time with regard to the interests only of the whole and not of any special part."

The census of 1890 tends to give to the people of this country proper and equal representation in proportion to the nationalities of which this country is made up, regardless of whether the immigration is new or old. The restrictionists who argued that immigration is a matter of privilege and not a matter of right, contended that it is the *American people* who are entitled to a quota. Assuming this to be our object, they declared that the quotas based on the census of 1890 come nearer being just and equitable to all the people of America than any other census or plan which it was practical to adopt. If their argument is sound then it is evident that the Act of 1921 discriminated in favor of the new immigration, while the Act of 1924, based on the census of 1890, divides our present and future immigration perhaps as nearly as it can be divided in a practical way in proportion to the national origins of our present population, when classified as "old" and "new" immigrants.

Concerning the suggestion to base the quotas on the census of 1890 an editorial in the *Saturday Evening Post*⁵⁷ for November 18, 1922 declared:

"As a temporary measure, the Act of 1921 has been of inestimable value in meeting a grave emergency; but even its friends are free to admit that it is unscientific legislation, in that it establishes the numbers that may be ad-

⁵⁷ Without doubt, the idea of basing the quotas on the census of 1890 was popularized by this editorial and made its adoption by Congress almost certain.

mitted without setting up acceptable standards of quality for the persons so favored. Indeed, it was realized before the passage of the act that its logical operation would make it inevitable that a considerable proportion of its beneficiaries would be persons that America does not need and does not want, aliens that would almost certainly prove national liabilities rather than national assets.

"Mr. Garis ingeniously proposes to remedy the weaknesses of the present law by the passage of a new act in which the percentage rule shall be applied to the body of aliens in the country at the time of the census of 1890. The merits of this proposal are obvious. In the year 1890 our population was still comparatively homogeneous; the immigrants living here at that time were for the most part of sound, assimilable stock. Taken by and large, they were the stuff of which Americans have been successfully made for the past 100 years. Given the same material, we can go on for another century making the sort of citizens we used to make 30 years ago. Measured in terms of racial values, any given percentage of our alien element in 1890 bears about the same relationship to a like percentage of our foreign population of 1910 as a bushel of dollar bills bears to the same bulk of ruble notes. Automatically such a law as Mr. Garis suggests sets a high standard rather than a low one, and at the same time fixes those definite numerical limitations that instincts of national self-preservation dictate.

"The comparative remoteness of the year 1890 cannot be made a basis of any valid argument against adopting the racial values of that period. A practical advantage of going back to 1890 for our definitions and specifications for a really useful and beneficent inflow of foreigners is that such a measure may fairly claim the support of those who formed their opinion on immigration matters some 30 or 40 years ago and have never seen the necessity of altering it to conform to utterly changed conditions. Then, too, such a law, in addition to being eminently fair and equitable, would be a fine and well-deserved tribute to those immigrants of a past generation to whom the country owes so

much. It would be a fitting recognition of the sterling qualities of the Scandinavian peoples, who have done much to build up the Northwest; of the Germans of the Carl Schurz type, who came to us in such numbers before the Civil War; of the Scotch and Scotch-Irish who, perhaps more than any other races, take to Americanism as duck takes to water and are perfectly assimilated in a single decade; and of still other peoples who have materially contributed to our national health and vigor."

It has been my purpose thus far in this chapter to explain why the census of 1890 was adopted as the basis for quota to set forth the argument that it is just and equitable and does not discriminate, and especially to establish the contention that it gives us a law that is practical and effective. As Professor Robert DeC. Ward of Harvard has put it "Such a law results in bringing in immigrants who present no difficulties of assimilation, who do not give rise to our immigration 'problem'. It is automatically selective, as well as numerically restrictive. If we are to maintain the physical and mental standards of our race; if we are to make America safe for democracy, to keep America for Americans, there is no more logical or practical method than this." Concerning the same problem Secretary of Labor Davis stated in a recent address, "There should be some immigration of the right kind, but we, not Europe, will say who shall come or we will not let any come." The census of 1890 as a basis for quota restriction gives us the most practical and effective legislation that we have ever had on the subject of immigration.

The Act of 1924 provides in section 11: "(b) The annual quota of any nationality for the fiscal year beginning July 1, 1927, and for each fiscal year thereafter, shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin (ascertained as hereinafter provided in this section) bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100.

“(c) For the purpose of subdivision (b) national origin shall be ascertained by determining as nearly as may be, in respect of each geographical area which under section 12 is to be treated as a separate country (except the geographical areas specified in subdivision (c) of section 4) the number of inhabitants in continental United States in 1920 whose origin by birth or ancestry is attributable to such geographical area. Such determination shall not be made by tracing the ancestors or descendants of particular individuals, but shall be based upon statistics of immigration and emigration, together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable.

“(d) For the purpose of subdivisions (b) and (c) the term ‘inhabitants in continental United States in 1920’ does not include immigrants from the geographical areas specified in subdivision (c) of section 4 or their descendants, (2) aliens ineligible to citizenship or their descendants, (3) the descendants of slave immigrants, or (4) the descendants of American aborigines.”

Such is the so-called “national-origin” plan, sponsored by Senator Reed of Pennsylvania. It is to be noted that it is a “national” and not a “racial” origin scheme. To illustrate this point, under the Act of 1921 the quota of Turkey was about 2,500 of which only 158 were Turks, the others being 417 Hebrews, 658 Armenians, 631 Syrians and 179 Greeks, besides other races. Under a racial origin plan there would have to be a separate Jewish quota. The immigration from the British Isles would have to be divided into quotas for the Irish, the Scotch and the Welsh as well as the English. What would happen in Central Europe under a racial origin plan would be worse than a Chinese puzzle. Furthermore, under such a plan the immigrants of a particular racial quota in many cases would not come from any one country but from many countries, which would result in complicated problems. For these reasons the law provides for national and not racial origin as the quota basis.

But does this give us as practical a basis for numeric limitation as the census of 1890, which is the present basis. The purpose of this national origin plan is to divide our immigrants in accordance with the national origins of our whole population so as to eliminate all charges of discrimination. The facts, however, seem to indicate that the present quotas based on the census of 1890 eliminate the discriminations in favor of either the "new" or the "old" immigration so far as *each type* has contributed to our racial make up. The figures as stated were thus: the "old" immigration is entitled to 85.2 per cent and gets 84.11 per cent of the total quotas while the "new" immigration is entitled to 14.62 per cent and gets 14.88 per cent of the total. From this it is obvious that there is little difference between the results obtained with either plan as the basis,—so far as the two types are concerned.

While it is thus true that the percentages of foreign-born Americans from northern and western Europe and from southern and eastern Europe under the 1890 census are substantially the same as the percentages of Americans native as well as foreign born, whose ancestors came from those two grand divisions of that continent, yet this is not true for many of the separate countries of the two divisions.

In a study of the population of the United States,⁵ Mr. John B. Trevor has analyzed our racial composition and reached the results, indicated in the table on page 273. However, it is a mere approximation.

If this national origin plan should ever go into effect it is most certain to lead to claims of discrimination and to many hard feelings. Furthermore, while the English and Germans are easily assimilated, yet such a large percentage from any one or two countries may not be as good for us as is the case under the census of 1890 by which method the total old immigration is divided into what will seem to the nationalities concerned as a fairer distribution. Also the present quotas based on the census of 1890 will create fewer problems for us. The object desired seems to be

⁵ *International Conciliation*, No. 202, September, 1924.

N ANALYSIS OF THE POPULATION OF THE UNITED STATES BASED UPON THE 1920 CENSUS

Country of birth	Descendants of colonial stock enumerated in 1st census, 1790, and descendants of arrivals between 1790-1820 (numerical equivalent)	Foreign white stock foreign born; native born of foreign parentage and native born of mixed parentage	Native born of native parentage contributed by arrivals between 1820-1900 (numerical equivalent)	Colored races	Total	Quota on basis of 150,000 Act of 1924, Sec. 11 Sub-Sec. (b), effective July 1, 1927
Albania	7,461	.....	.....	7,461	100
Armenia	44,042	899	.....	44,941	100
Austria	1,249,852	66,241	.....	1,316,093	2,171
Belgium	132,195	17,498	.....	149,693	251
Bulgaria	14,485	.....	.....	14,485	100
Czechoslovakia	783,946	41,774	.....	825,720	1,359
Danzig	15,066	2,679	.....	17,745	100
Denmark	511,906	64,078	.....	575,984	945
Estonia	196,187	4,043	.....	200,230	325
Finland	302,931	6,548	.....	309,479	517
France	875	51	.....	926	100
Germany	556,202	231,679	.....	1,082,399	1,772
Greece	294,518	.....	.....	12,173,374	20,028
Hungary	6,779,598	2,625,303	.....	.....	.....
Iceland
Ireland
Italy
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Rumania
Russia
Spain
Sweden
Switzerland
Yugoslavia
San Marino
Andorra
Leichtenstein
Monaco
Palestine
Syria
Turkey
Hejaz
Persia
Egypt
Liberia
Abyssinia
Morocco
Union of South Africa
Australia
New Zealand and Pacific Islands
Canada
Newfoundland
West Indies
Mexico
Central and South America
Black
Mulatto
Indians
Chinese
Japanese
All others
Total	49,086,402	36,398,958	9,335,555	10,889,705	105,710,620	150,000

not to admit more or less of any particular nation but to limit all, but especially new immigration, in an effective and practical manner.

Grouping of immigrants by countries of origin does not give, or rather it conceals, information as to the racial elements making up our immigration tide. For this reason care must be exercised by bearing in mind exactly what this arbitrary grouping really means. National origin is not always the same as identity of race. Politics often cut through and separate a race. The same race is not infrequently found organized in more than one nationality. Thus, country of origin or nationality as determined by political boundaries or governmental jurisdiction bears no constant or necessary relation whatever to race but is usually an artificial result of historical causes. Political boundaries, moreover, may not often be national; they are too often merely governmental.

The national origin plan means that we would have to abandon a practical method and adopt something which we do not know anything about. As Chairman Johnson stated in the House, "It appears to be a stalling plan. It is a postponement. It means three more years of struggle." It was put into the law in order to get the legislation through in time, for something had to be done and the Senate stood behind its author.

In the first monograph from the census, entitled "Increase of population in the United States from 1910 to 1920" there are fully a hundred pages devoted to an effort to discover the nationalities of the stock of the people of the United States. No definite plan was worked out for it was impossible to do so and yet we must have some base to start with. It is not going to be an easy matter to come to some sort of *artificial* conclusion as to a basis and it is going to take years to do so. Its advocates confessed this weakness when they acknowledged that they did not possess any definite figures. Three years were allowed to solve the problem but as yet no satisfactory solution has been reached. Congressman Box seems to have stated the facts

correctly when he characterized the plan as "indefinite, uncertain and illy digested," while Chairman Johnson stated that under the 1890 plan you know what you are doing while under the national origin plan you go after "interesting but uncertain dreams."

In an article in the New York Times⁵⁹ Mr. A. H. Ulm pointed out that the preparation of the estimates of national origins involves countless difficulties, some of which are as follows: The first complete census was not taken until 1790. No records of immigration by nationality were kept until 1820. The total number of foreign born in the country was not listed by country of origin until 1850. The recording of the country of origin of persons born here of foreign-born parents was not started until 1890. He indicated, furthermore, that there is the difficulty of classifying the millions of persons of mixed stock.⁶⁰

The Secretaries of State, Commerce and Labor in their report to the President stated that "the statistical and historical information available raises grave doubts as to the whole value of these computations as a basis for the purposes intended." Mr. Herbert Hoover, Secretary of Commerce, reiterated on January 11, 1927 the convictions expressed in his letter transmitting the census data on the national origins of the population of this country, that the historical and statistical data on the subject were "very feeble."⁶¹

After quoting various authorities on the subject of national origins,⁶² Senator Shipstead stated: "I find that we have not sufficient official or other data upon which to determine the quota of each country upon this basis and that it would lead to discrimination between nationalities, which is just what Congress diligently endeavored to avoid in passing the immigration act of 1924." As early as June 24, 1925 the Director of the Census, Mr. Steuart, stated that

⁵⁹ Oct. 10, 1926.

⁶⁰ For a detailed verification of these statements see *Congressional Record*, February 1, 1927, page 2747.

⁶¹ *United States Daily*, January 12, 1927.

⁶² *Congressional Record*, February 1, 1927, pp. 2746-2750.

"there are no figures in existence which show completely the national origin of the population of the United States."

The Commissioner-General of Immigration in his annual reports for 1925⁶³ and 1926⁶⁴ recommended the repeal of the national origins provision and the continuation of the present 1890 quota basis. He stated in the latter report that "the advantages of the present method, for administrative purposes, are its simplicity and certainty, and the further fact that it is well established by practice."

Under leave granted to him to extend his remarks Congressman Albert Johnson discussed the national origins provision in some detail.⁶⁵ He stated: "The determination of quotas under the national origins provision is an executive function, and under the law the Secretaries of State, Commerce and Labor are charged with the responsibility of ascertaining the ratio numbers to be used in calculating quotas to be proclaimed by the President. The law, however, is peculiarly worded. It says:

Such officials shall, jointly, report to the President the quota of each nationality, determined as provided in subdivision (b), and the President shall proclaim and make known the quotas so reported. Such proclamation shall be made on or before April 1, 1927.

But the law says further:

If the proclamation is not made on or before such date, quotas proclaimed therein shall not be in effect for any fiscal year beginning before the expiration of 90 days after the date of the proclamation. . . . If for any reasons quotas proclaimed under this subdivision are not in effect for any fiscal year, quotas for such year shall be determined under subdivision (a) of this section.

In other words, if the national origins provision does not become operative, the existing arrangement shall continue.

It must be clear that, upon the adoption of the national origins provision by the Senate and House conferees in 1924, consideration was given the possibility that ascertainment of national origins might not be feasible, and the above language was employed to provide authority for the continuance of existing quotas in such a contingency.

⁶³ Page 29.

⁶⁴ Page 22.

⁶⁵ *Congressional Record*, Tuesday, June 29, 1926.

It follows, therefore, that notwithstanding the mandatory terms apparently requiring that national origin quotas be determined, and that report be made to the President, and requiring also the issuance of a presidential proclamation on or before April 1, 1927, the new quota basis need not become effective at all.

At this time I do not propose to discuss the propriety of readjusting quotas upon the national origins basis, or the desirability of the provision in the law, or the possibility of its repeal.

I do not know of a certainty what quotas may be expected to be assigned to particular nationalities in the event that the provision becomes operative. Various computations have been made, but all are estimates merely. No one of them is entitled to be considered as certain of adoption. . . .

Since the enactment of the immigration act of 1924 the press has given some attention to the national origins provision, and because there is much misinformation concerning it I am inserting in these remarks a brief statement of the legislative history of the matter.

This information is as follows:

LEGISLATIVE HISTORY OF NATIONAL ORIGINS PROVISION

(Note: All page numbers relate to the CONGRESSIONAL RECORD, permanent edition, 68th Cong., 1st sess.)

The national origins provision of the immigration act of 1924 was first offered in the House of Representatives by the late Representative Rogers of Massachusetts, April 11 and 12, 1924, during debate on the immigration bill, H. R. 7995. The House rejected the Rogers amendment. (RECORD, pp. 6110, 6111, 6226-6229.)

During debate on the immigration bill in the Senate, April 14, 1924, the proposition in slightly different language was presented by Senator REED of Pennsylvania. (RECORD, p. 6316.) After amendment it was agreed to in the Senate on April 14, 1924. (RECORD, pp. 6471, 6472.)

The only presentation of the subject matter in a committee hearing before enactment of the immigration act of 1924 was on March 8, 1924, when John B. Trevor testified before the Senate Committee on Immigration. (See hearing entitled 'Selective Immigration Legislation,' Committee on Immigration, United States Senate, 68th Cong., 1st sess., on S. 2365 and S. 2576, p. 89.)

Having been accepted by the Senate (April 16, 1924) and rejected by

the House (April 12, 1924), the national origins provision became a subject for consideration of the committee of conference, which revised the text of the entire bill, amended and accepted the national origins provision, and submitted its report (H. Rept. No. 688) to the House on May 9, 1924.

The conference report was debated in the House that day and the national origins provision was discussed by Representative SABATH (RECORD, pp. 8230, 8231), and by Representative DICKSTEIN (RECORD, pp. 8238, 8239).

The bill was recommitted to the committee of conference (RECORD, p. 8249) and was again brought before the House in a second conference report (H. Rept. No. 716) submitted May 15, 1924. (RECORD, p. 8627.) In debate on the second conference report the national origins provision was discussed by Representative SABATH (RECORD, pp. 8634, 8635); by Representative WEFALD (RECORD, pp. 8635, 8636); by Representative DICKSTEIN (RECORD, p. 8637); and by Representative WATKINS (RECORD, p. 6850).

The second conference report was submitted in the Senate on May 15, 1924 (RECORD, p. 8568). The national origins provision was mentioned briefly by Senator HARRISON (RECORD, p. 8580)."⁶⁵

The national origins provision was frequently before both houses of the Sixty-ninth Congress, Second Session. On February 1, 1927, the Senate, without a record vote, adopted Senate Joint Resolution No. 152, introduced by Senator Johnson, of California, which would postpone the effective date of the national origins clause from April 1, 1927 to April 1, 1928. This resolution was amended by the House Committee on Immigration to provide for the entire repeal of the national origins provision. The resolution (S. J. Res. No. 152) was then reported favorably to the House on February 9, 1927. In its report, the House Committee stated that according to the commission, "the statistical and historical information available raises grave doubts as to the whole value of these computations as a basis for the purposes intended."⁶⁷ On March 3 the House passed the resolution without the amendment. The President approved it on March 4, 1927.

The debate in the Senate brought out some interesting information on the subject.⁶⁸ Senator Reed of Pennsylvania defended the plan while Senator Reed of Missouri and other Senators subjected it to sharp criticism.

⁶⁵ A bibliography prepared by the Library of Congress for Congressman Johnson is in the author's bibliography under the title "National Origins."

⁶⁷ For much detailed information, see Hearings of the House Committee on "National Origins Provision," January 18, 19, and 26, 1927. Hearing No. 69.2.1. Sixty-ninth Congress, Second Session.

⁶⁸ *Congressional Record* for Feb. 1, 1927, pp. 2737 to 2750.

Excerpts from the debate follow:

Mr. Reed of Pennsylvania: If the "national origins" method is repealed, it will allow an immigration of about 164,000 annually. If it goes into effect, it will cut down the immigration to 153,000.

Mr. Caraway (Dem.), Ark.: Of course, that question is not up now; but I am very much opposed to an increase of immigration.

Mr. Lenroot (Rep.), Wis.: Mr. President, is not this the situation? Those who desire the repeal of the law—and I am one of them—merely desire to have the immigration remain permanently as it is under the law applied today?

Mr. Reed of Pennsylvania: Exactly.

Mr. Johnson (Rep.), Calif.: Exactly. We remain exactly as we are today, with no increase, no difference, for one year.

Mr. Bruce (Dem.), Md.: Mr. President, may I ask the Senator from California what is the motive back of it? Is it the idea that the time is too short to work out this "national origins" idea?

Mr. Johnson: There are three motives:

First, the President is required under the law, and assumes the law to be mandatory, as we understand, to issue his proclamation on the 1st day of April. That is No. 1. Either we must take affirmative action or he issues his proclamation.

No. 2. The time is so limited that the contest that is obvious upon the subject matter cannot be disposed of.

No. 3 is that the data upon which a law concerning "national origins" would be predicated are so insufficient and so inadequate that even the President in his message says we can scarcely predicate anything upon them.

Mr. Bruce: The effect of the proposition, then, is simply to postpone the date?

Mr. Johnson: Entirely; to leave matters exactly as they are, and postpone the date for one year.

Mr. Reed (Dem.), Mo.: Mr. President, when these illuminating interruptions came I was about to say that I

have examined the report which is transmitted by the President to the Congress; and the report having been made with reference to the question of "national origins," anyone who will examine that report will understand that at best it furnishes only the loosest kind of a guess as to the origins of the present population of the United States. A moment's consideration will show how difficult the problem would be.

A man whose ancestors or some of whose ancestors have been in this country four or five generations finds as many crosses of blood, and each of these crosses of blood finds as many crosses in its own instance; and the result is that it is very difficult to say, as to any man whose ancestors came here a century ago, that they are of English stock, or Irish stock, or Scotch stock, or German stock, because there may intermingle in his veins the blood of a half-dozen different races.

So that the proposition of selecting people by race-origin is impossible, for there are probably men in this Chamber who have four or five different national bloods in their veins; and this commission undertook to guess it off by the number of people of known national origin at some certain time in the country, and then presuming that their posterity continued in that ratio.

It is the wildest kind of a guess. The national-origins law is the most impractical thing I ever saw written into a law, and it opens the door for all kinds of unfairness and injustice.

According to this schedule which was prepared, we are nearly all English; the great percentage of our population is English. Everybody with a little bit of common-sense knows that is not true. The law ought to be changed.

For instance, under the present law, as shown by this report, there can be admitted from Germany 51,227; under the proposed change only 23,428.⁶⁹

From Great Britain and northern Ireland—they divide northern Ireland now from southern Ireland, I presume, because it happens to be politically separated—under the

⁶⁹ The following abbreviated table, taken from the Quota Board's report of December 16, 1926, shows the provisional national origins quotas for

present law there can be admitted 34,007, and under the new allotment 73,039.

Mr. McKellar (Dem.), Tenn.: What about the Irish Free State?

Mr. Reed of Missouri: The Irish Free State, under the present law, is permitted to send here 28,567; under the new allotment, 13,862.

Let us take Denmark. We are getting into the Scandinavian country now, speaking broadly. Its quota, under the present law, was 2,789; under the proposed change it is only 1,044.

Coming to Norway, under the present law its quota is 6,453; under the proposed new allotment 2,267.

The allotment of Sweden under the present law is 9,561. Under the proposed new allotment it is 3,259.

Mr. Bruce: If the Senator has the figures before him, will he tell us how the new plan affects the Italian immigration?

Mr. Reed of Missouri: Under the present law the quota of Italy is 3,845. Under the proposed allotment it is 6,091.

Speaking generally, the schedules as I look at them are not changes for the better.

Mr. Reed of Pennsylvania: Mr. President, will the Senator yield?

Mr. Reed of Missouri: Yes.

Mr. Reed of Pennsylvania: As one of those who helped the principal quota countries as compared with the 1890 quotas for the same countries.

County of origin	Provisional quotas on basis of na- tional origin.	Present quotas based on 1890 for- eign born population.
Austria	1,486	785
Czechoslovakia	2,248	3,073
Denmark	1,044	2,789
Great Britain and Northern Ireland	73,639	34,007
Germany	23,428	51,227
Irish Free State	13,862	28,567
Italy	6,091	3,845
Netherlands	2,421	1,648
Norway	2,267	6,453
Poland	4,978	5,982
Rumania	516	603
Russia	4,781	2,248
Sweden	3,259	9,561
Switzerland	1,198	2,081

in its origination, I think I might fairly claim that it did occur to us that a man has one father and one mother, and some of the other profound truths the Senator has just blessed us with.

Mr. Reed of Missouri: I wonder why the Senator did not follow some of these profound truths. Was it because they were truths that he shied from them?

Mr. Reed of Pennsylvania: No; because the Census Bureau, which knows almost as much about these subjects as the Senator from Missouri, told us that it was possible with reasonable accuracy to determine the national origins of the present population, and because it was self-evident that no method of basing the quotas on the foreign born alone did justice to the native born of America, and every other scheme that has ever been suggested based them on the number of foreign born in this country. We thought that we, who were born in this country, had at least as much right to be reflected in the quota as had recently arrived immigrants.

Mr. Shipstead: The Senator from Pennsylvania said that the Census Bureau has claimed that they had some formula or system by which they could arrive at definite data giving us information of the national origins of our population. I think they made that claim at the time of the passage of the immigration act. The committee which under the law was charged with the work of gathering these data obtained their figures from the Bureau of the Census, and a report from them has been submitted by the President to Congress. . . . I think it is fair to assume that the committee composed of the three secretaries had all the data and formulas made available by the Bureau of the Census and that they made use of them. I should like to know if the Senator from Pennsylvania has any additional information upon which to base an argument that other formulas or other data are available now which will bolster the argument for the national origins clause.

Mr. Reed of Pennsylvania: The Director of the Census within a few days has testified before the House Committee that the margin of error in the figures which have been published is very small, and that if the benefit of the doubt

IMMIGRATION QUOTAS.

Provisional immigration quotas based on national origin as provided by the immigration act of 1924; also present immigration quotas as based on 1890 foreign-born population; and estimated quotas on national-origin basis as submitted to Congress when the act of 1924 was under consideration.

Country of origin	Provisional quotas on basis of national origin	Present quotas based on 1890 foreign- born population	Estimated quotas on national origin basis as submitted to Congress in 1924
Total	153,541	164,667	150,000
Afghanistan	100	100	.....
Albania	100	100	100
Andorra	100	100	100
Arabian Peninsula	100	100	.....
Armenia .....	.....	124	100
Australia, etc.	100	121	100
Austria	1,486	785	2,171
Belgium	410	512	251
Bhutan	100	100	.....
Bulgaria	100	100	100
Cameroon (British) ..	100	100	.....
Cameroon (French) ..	100	100	.....
China	100	100	.....
Czechoslovakia	2,248	3,073	1,359
Danzig	122	228	100
Denmark	1,044	2,789	945
Egypt	100	100	100
Estonia	109	124	325
Ethiopia (Abyssinia) ..	100	100	100
Finland	559	471	517
France	3,837	3,954	1,772
Germany	23,428	51,227	20,028
Great Britain and Northern Ireland	73,039	34,007	85,135
Greece	367	100	384
Hungary	967	473	1,521
Iceland	100	100	100
India	100	100	.....
Iraq (Mesopotamia) ..	100	100	.....
Irish Free State	13,862	28,567	8,330
Italy, etc.	6,091	3,845	5,716
Japan	100	100	.....
Latvia	184	142	384
Liberia	100	100	100
Liechtenstein	100	100	100
Lithuania	494	344	458
Luxemburg	100	100	100
Monaco	100	100	100
Morocco	100	100	100
Muscat (Oman)	100	100	.....
Nauru	100	100	.....

Country of origin	Provisional quotas on basis of national origin	Present quotas based on 1890 foreign- born population	Estimated quotas on national origin basis as submitted to Congress in 1924
Nepal	100	100	.....
Netherlands	2,421	1,648	2,762
New Zealand, etc.	100	100	100
Norway	2,267	6,453	2,053
New Guinea, etc.	100	100	.....
Palestine.....	100	100	100
Persia	100	100	100
Poland	4,978	5,982	4,535
Portugal	290	503	236
Ruanda and Urundi	100	100	.....
Rumania	516	603	222
Russia	4,781	2,248	4,002
Samoa, western	100	100	.....
San Marino	100	100	100
Siam	100	100	.....
South Africa, Union of	100	100	100
South West Africa	100	100	.....
Spain	674	131	148
Sweden	3,259	9,561	3,072
Switzerland	1,198	2,081	783
Syria and the Lebanon	100	100	100
Tanganyika	100	100	.....
Togoland (British)	100	100	.....
Togoland (French)	100	100	.....
Turkey	233	100	100
Yap, etc.	100	100	.....
Yugoslavia	777	671	591

were given the protesting nationalities, the figures would still be substantially as they are here.⁷⁰

✓ The evidence thus seems to be overwhelmingly against the use of "national origins" as the quota basis, for, however good the national origins plan may sound in theory, this is not a time for experimenting. The census of 1890 gives us a practical, definite basis and virtually the same ultimate results, as between the two great regions of Europe.

In a speech at the Hotel Astor March 25, 1924, Hon. Henry H. Curran, former commissioner of immigration at Ellis Island, stated: ⁷¹ "I am for the 1890 measure. It helps us to become more homogeneous by sending to us

⁷⁰ *Congressional Record*, February 1, 1927, pp. 2741-2742.

every year a miniature or replica of that which we are already according to original national stock. The 1890 measure is the soundest, the healthiest, the fairest, and the best."

The Immigration Restriction League advocates the national origins plan for the following reasons:

"There can be little doubt, after studying the debates in Congress at the time the Immigration Act was passed, that the purpose was the same with respect to both the National Origins and 1890 bases; namely, to ensure that our future immigration should correspond in its make-up with our population as it is today. . . . As between the two great regions (from which the old and new immigration comes), the 1890 Census basis produced results which are only slightly different from those reached on the national origins basis as recently reported by the Quota Board. However, the 1890 basis does not work out fairly with respect to individual countries within these groups,—more especially with respect to Great Britain, Germany and the Irish Free State. . . . While about one-half of our total white population is derived from England, Scotland, Wales, and North Ireland, their joint quota is only one-fifth of the quota immigration, while Germany, from which only about one-sixth of our population is derived, has a quota of nearly one-third of the total immigration. Discrepancies, although less in extent, exist with respect to all other countries under the 1890 census system now in effect. By the application of the national origins system all inequalities will be corrected."

In reply to a question from Senator Robinson concerning the difference between the 1890 census and the national origins plans, Senator Reed of Pennsylvania stated:⁷² "There is almost no difference between the result of the 1890 method and the result of the proposal I have just been outlining."

The results being virtually the same for the old and new immigration, the difference must be in the means to the end.⁷³ In making our choice of methods it would seem better, therefore, to select the more practical and definite plan, viz., the indefinite continuation of the 1890 census as the quota basis. This would necessitate striking out paragraphs (b), (c), (d) and (e) of section xi of the immigration act of 1924. Thereby we would eliminate from the present law its main weakness. Such would seem to be the ultimate action that Congress should and will take on the subject.

⁷¹ *Congressional Record*, Vol. 65, pt. 6, p. 5475.

⁷² *Congressional Record*, Vol. 65, pt. 6, p. 5468.

⁷³ The old immigration today as a whole creates virtually no problems. (See *supra*, p. 218.) The changes proposed for the different nations, until based on more accurate statistics, should, therefore, be delayed in the author's opinion.

CHAPTER IX

CHINESE IMMIGRATION

CAUSES of early opposition to Chinese—Early state and municipal legislation against them—Early treaties—The Burlingame treaty of 1868—President Grant's recommendation—Congressional investigation—The Committee's report—Act of 1875—The treaty of 1880—Act of 1882—Act of 1884—The unratified treaty of 1888—Acts of 1888—Cases—Act of 1892—Cases—Act of 1893—Treaty of 1894—Act of 1894—Acts of 1900—Act of 1902—Act of 1904—Conclusions on Chinese immigration—Act of 1917—Hindu immigration.

No treatment of the development of America's immigration policy would be complete without reference to our legislation on Asiatic immigration. It is intended in this and the next chapter only to trace the course of this legislation and to point out the particular grounds on which it rests.

The first great migration of Chinese laborers to this country dated from the time of the great rush to California in search of gold in the early fifties. Before the end of the sixties, on account of the absence of cheap labor, they had gone into a variety of occupations. They were industrious, thrifty, and the form of organization of the Chinese laborers, by which it was possible for employers to secure the services of almost any number desired through one contractor, placed a premium upon their employment. They were at first regarded without aversion by the other immigrants into California. However, agitation against them began shortly after their coming into California in large numbers. The race antipathy which developed was due to their peculiarities of dress; to their color, language and habits; to their inoffensive manners and general defencelessness; and also to the fact that, in many cases, they

were willing to work for lower wages than the American laborer.

This popular feeling against the Chinaman soon expressed itself in state legislation and city ordinances, directed specifically or indirectly against him. "An act of the California legislature in 1855 imposed a tax of \$55 on every Chinese immigrant. A subsequent act (1858) prohibited all persons of the Chinese or Mongolian races from entering the state or landing at any port thereof, unless driven on shore by stress of weather or unavoidable accident, in which case they should immediately be re-shipped. An act was passed in 1862 providing that every Mongolian over eighteen years of age should pay a monthly capitation tax of \$2.50, except those engaged in the production and manufacture of sugar, rice, coffee and tea. All of these acts were declared unconstitutional by the Supreme Court of California."¹ In 1861 an act was passed imposing a tax on foreign miners. While it was levelled nominally against all foreigners, it was enforced only against the Chinese. Furthermore, they could not escape it, since they were the only ones who were not allowed to become naturalized.

In like manner a number of city ordinances were passed for the purpose of reaching the Chinese indirectly.² San Francisco passed a laundry ordinance imposing a license fee of \$15 per quarter on laundries not using a vehicle. The Chinese laundries commonly used no vehicle. Men who sold vegetables on the street from door to door were required to pay a fee of \$2 if they drove a wagon, of \$10 if they went on foot. The "queue ordinance" provided that every person convicted for any criminal offense should have his hair cut to a length of one inch from his head. The loss of his queue was a lasting disgrace to the Chinaman. The "cubic air ordinance" required that no person should let or hire any tenement house where the capacity of the rooms was less than five hundred cubic feet for every

¹ Smith, R. M., *op. cit.*, p. 238.

² Smith, R. M., *op. cit.*, p. 240.

person sleeping there—which was enforced only against the Chinese.

The efforts of the state of California to stop Chinese immigration were rendered futile by the decisions of the Federal Courts. A California statute which gave the state commissioner of immigration power to exclude from the state lunatics, idiots, deaf and dumb persons, cripples, lewd and debauched women, etc.,—the purpose being to exclude Chinese prostitutes—was declared unconstitutional by the Supreme Court of the United States. The court held that the prohibition or even regulation of immigration by a state was a regulation of foreign commerce, and hence belonged exclusively to Congress.³

Met at every turn by the adverse decisions of the courts,⁴ California finally decided to appeal to Congress for national legislation to put a stop to Chinese immigration.

Our political relations with China date back to the year 1844 when Caleb Cushing negotiated the first treaty between the United States and that country. Neither it nor the Reed treaty of 1858 said anything about the rights of Chinese trading or residing in the United States, for under our laws at that time they were allowed to come and go freely, to engage in any occupation they pleased; and if they committed crimes they were subject to the jurisdiction of our courts. In other words, they were coming here under exactly the same conditions as the citizens of any other nation and enjoyed exactly the same privileges.

By Art. V of the treaty between the United States and China, commonly called the Burlingame treaty, concluded at Washington, July 28, 1868, the high contracting parties “cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other for purposes of curiosity, of trade or as perma-

³ *Chy Lung v. J. H. Freeman et al.*, 92 U. S. Reports 275.

⁴ See *Soon Hing v. Crowley*, 113 U. S. 703 and *Yick Wo v. Hopkins*, 118 U. S. 356 (1886).

nent residents;" they "therefore join in reprobating any other than an entirely voluntary emigration for these purposes;" and "consequently agree to pass laws making it a penal offense for a citizen of the United States or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country, or for a Chinese subject or citizen of the United States to take any citizen of the United States to China or to any other foreign country without their free and voluntary consent, respectively."

Art. VII stated, "But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States."

Prior to this treaty of 1868 our efforts had been directed towards compelling the Chinese to admit Americans to China for the pursuit of trade and commerce. In this treaty, however, we placed ourselves on the broad platform of the right of free migration and the duty of international intercourse. Shortly after this declaration, the influx of Chinese into this country caused such inconvenience that we immediately turned our backs on the principle of freedom of migration, and passed laws excluding the Chinese as effectually as they had ever excluded foreigners. Thus, in later years this treaty became a source of embarrassment to the United States. The express declaration that the right of migration is inalienable and the express promise that "the subjects of China shall enjoy the same privileges, immunities and exemptions in respect to travel and residence as may be enjoyed by the citizens or subjects of the most favored nation," expressly committed us, and under the most solemn circumstances, to principles which a few years later we flatly repudiated.

In his annual message to Congress, December 7, 1874, President Grant stated:

"In connection with this subject I call the attention of Congress to a generally conceded fact, that the great proportion of the Chinese immigrants who come to our shores do not come voluntarily to make their homes with us and

their labor productive of general prosperity, but come under contracts with head-men who own them almost absolutely. In a worse form does this apply to Chinese women. Hardly a perceptible percentage of them perform any honorable labor, but they are brought for shameful purposes, to the disgrace of the communities where settled and to the great demoralization of the youth of those localities. If this evil practice can be legislated against, it will be my pleasure as well as my duty to enforce any regulation to secure so desirable an end."

In a letter to Mr. G. F. Seward, August 31, 1876,⁵ the Secretary of State, Mr. Fish, stated, "The application of the settled principles of international law to the Chinese in the United States is to be modified by the fact that the Chinese decline to accept these principles, leading an isolated life in the communities in which they are settled, always expecting to return to China, and never, therefore, becoming domiciled among us, and that they maintain the same system of isolation towards Americans in China regarding them always as strangers, more or less outside of the protection of the law."

The anti-Chinese feeling soon entered into national politics and the leaders of the two parties yielded to it for the purpose of securing the vote of those states. In 1876 both parties inserted an anti-Chinese plank in their platforms, and a special joint committee of the Senate and the House of Representatives proceeded to the Pacific coast to investigate the question on the spot, and formulated a report which covered every phase of the Chinese question, and is of value today in that it shows the way in which the Chinese were regarded by the various classes of people in California. This report fully substantiated the charges made by the advocates of exclusion of the Chinese.

They found "that there was danger of the white population of California becoming outnumbered by the Chinese; that they came here under contract, in other words as coolies or a servile class; that they were subject to the

⁵ MS. Inst. China, II 429 in Moore's Digest, Vol. IV p. 188.

jurisdiction of organized companies which directed their movements, settled disputes among them, and even had power of life and death, which they exercised by assassination; that Chinese cheap labor deprived white labor of employment, lowered wages, and kept white immigrants from coming to the state; that the Chinese were loathsome in their habits, and the filth of their dwellings endangered the health of the city; that they were vile in their morals, and spread prostitution, gambling and opium habits; that they did not assimilate with the whites, and never could become an integral and homogeneous part of the population." ⁶

Some of these assertions were perhaps too sweeping. However, the evidence then and to this day seems to substantiate the charge that the Chinese do not assimilate with us. It was stated by the committee that the Chinese come here with the single object of making money and then returning to China; that they have no intention of becoming permanent residents and no desire to adopt our customs and habits of life; that they have shown no desire to become acquainted with our political institutions or to take part in political life; that the whole history of the intercourse between China and the Western powers has exemplified the fact that, with their four thousand years of civilization behind them, they are imbued with a thorough contempt for the mushroom growth of European life; and that they remain isolated and constitute an alien element in the midst of us.

The report closed as follows:

"The committee recommend that measures be taken by the executive looking toward a modification of the existing treaty with China, confining it to strictly commercial purposes; and that Congress legislate to restrain the great influx of Asiatics to this country. It is not believed that either of these measures would be looked upon with disfavor by the Chinese government. Whether it is so or not, a duty is owing to the Pacific states and territories, which

⁶ Smith, R. M., *op. cit.*, pp. 242-3.

are suffering under a terrible scourge, but are patiently waiting for relief from Congress."

Besides prohibiting the importation of women, especially Chinese, for the purpose of prostitution, and the immigration of convicts, the principal provision of the Act of March 3, 1875, was that the transporting into the United States of residents of China, Japan or any Oriental country without their free and voluntary consent, for the purpose of holding them to a term of service, was to be punished by imprisonment for not more than one year and by a fine not exceeding \$2,000. It further provided that any person attempting to contract in this manner to supply coolie labor to another should be guilty of a felony and imprisoned for not more than one year and pay a fine of not more than \$5,000.

Owing to the excitement caused by the dispute over the presidential election of 1876, no action was taken on the report of the committee until 1879 when Congress passed what was practically a Chinese exclusion act, which undertook to abrogate the obnoxious sections of the Burlingame treaty of 1868. The bill, passed by the House by an overwhelming vote and by the Senate by a vote of 39 against 27, was vetoed by President Hayes, who gave as one reason his contention that Congress had no right to abrogate a treaty. However, he hastened to comply with the wish of the representatives of the people that the treaty of 1868 should be modified, and a commission was sent in 1880 to China for that purpose.

On October 1, 1880 the American commissioners, Messrs. Angell, Swift, and Trescot, laid before the Chinese commissioners, Messrs. Pao Chün and Li Hung Tsao, who proved to be shrewd negotiators, a memorandum exhibiting the difficulty and dangers attending the free immigration of Chinese laborers into the United States, and the desire of the United States to revise the treaty stipulations between the two countries on the subject.

The Chinese commissioners, in a memorandum of October 7, 1880, intimated that they were ready to enter

upon negotiations to prohibit the emigration of the four classes—coolie laborers, criminals, prostitutes, and diseased persons. They also pointed out that there was no compulsory emigration from China to the United States; that China rejoiced in the freedom which her subjects enjoyed in America; they also quoted a declaration of Senator Morton, that the constitution declared that all peoples might come to the United States without let or hindrance, and they declared that the Chinese in America had added greatly to the wealth of this country. The American commissioners intimated rather sharply, due to this unexpected attitude of the Chinese negotiators, that this proposal was insufficient and asked that the Chinese Government consent to such a modification of the free immigration clauses of the Burlingame treaty as would avoid the raising of questions that might disturb the friendly relations of the two countries. To this end the American commissioners submitted a project of a treaty which stated that the Government of the United States should have the right to regulate, limit, suspend, or prohibit the coming of Chinese laborers, by which term was to be understood all immigration other than that for teaching, trade, travel, study, and curiosity. The Chinese commissioners agreed to the *limitation* of immigration, but not to the *prohibition*, and they sought to confine the limitation to California. The American commissioners finally agreed to omit the word "prohibit" and use the words "regulate, limit, or suspend," but they declined to subject to conditions the right thus secured. They also declined to admit the exception of "artisans" from the class of Chinese laborers. The terms of the treaty, which are still in force, were agreed to on November 6, 1880.

Article I stated: "Whenever in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States

may regulate, limit, or suspend such coming or residence but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse."

After the treaty of 1880 was concluded, a bill to execute certain stipulations contained therein was passed by the House and Senate. However, on April 4, 1882, President Arthur returned the bill with his veto, his principal reason for refusing to sign it being that the passage of an act prohibiting immigration for twenty years was an unreasonable suspension of immigration and, consequently, a breach of the treaty.

Subsequently, a modified bill was passed by Congress, and, although containing some of the provisions objectionable to the President, he approved it on May 6, 1882.

This act suspended (sec. 1) for ten years the coming of Chinese laborers to the United States, provided for the deportation of any who should come in violation of the prohibition, and imposed (sec. 2) on the master of any vessel who should "knowingly bring within the United States on such vessel, and land or permit to be landed, any Chinese laborer, from any foreign port or place," a fine of not more than \$500 for each such laborer, to which might also be added a year's imprisonment. These sections, however, did not apply (sec. 2) to Chinese laborers in the United States on Nov. 17, 1880, or who should have come within ninety days after the passage of the act; but such laborers, in order to establish their right to go and come, were required (sec. 4), on departing from the United States, to obtain from the collector of customs certificates of identity entitling them to return.

It was further provided (sec. 6) that Chinese persons, other than laborers, who might be entitled to enter the

United States, should be so identified "by certificate issued under the authority of" the Chinese Government; and the forgery of such a certificate was made a misdemeanor, punishable by a fine not exceeding \$1,000 and imprisonment not exceeding a year.

Masters of vessels were required (sec. 8) to furnish lists of Chinese passengers; and any vessel whose master knowingly violated any provision of the act was subject to forfeiture (sec. 10). Bringing in by land was also made (sec. 11) a misdemeanor, punishable with fine and imprisonment.

Any Chinese person who, on hearing before a "justice, judge, or commissioner of a court of the United States", was found to be unlawfully in the United States, was to be deported.

The credentials of "diplomatic and other officers" of the Chinese Government were made equivalent to the certificate required in other exempt classes (sec. 13).

It was forbidden to admit Chinese to citizenship (sec. 14). Finally, the words "Chinese laborers" were defined as including "both skilled and unskilled laborers and Chinese employed in mining."⁷

The next legislation on the subject was the act of July 5, 1884,⁸ one provision of which amended section 1 of the Act of 1882 so as to make it unlawful for any Chinese laborers to come to the United States "from any foreign port or place."

Section 4 was amended so as to provide (1) that the certificate of identity of a laborer, instead of being "prima facie" evidence, should be "the only evidence permissible to establish his right of reëntury"; (2) that every Chinese person of the exempt classes claiming a right to enter should "obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject", and that the certificate thus required should be visaed by the American diplomatic representative "in the

⁷ 22 Stat. 58.

⁸ 23 Stat. 115.

foreign country from which such certificate issues", or by the American consular representative at the port or place of departure; and, while it was made *prima facie* evidence of the facts stated in it, it was declared to be "the sole evidence permissible" of the individual's exempt character. It was expressly declared that the provisions of the act should "apply to all subjects of China and Chinese, whether subjects of China or any other foreign power."

This act of May 6, 1882, as amended by the act of July 5, 1884 was continued in force for ten years by the act of May 5, 1892.⁹ and was further continued in force by the act of May 5, 1902.

The act of 1884 was carried out with extreme harshness and gave rise to a number of cases of individual hardship. However, relief was given in several such cases, one being as follows: a Chinese laborer who was here in 1880 but departed before the act of 1882 requiring a certificate had been passed, was refused admission on his return on the ground that he had no certificate, which by the act of 1884 was made an indispensable condition of re-admission. The Supreme Court held that the act of Congress should not be interpreted as demanding a condition impossible of fulfillment, and that, although Congress has the power to abrogate treaties by legislative action, yet such power will not be deemed to have been exercised if any other interpretation of the statute is possible.¹⁰

Opposition to the Chinese in this country continued, so that, in 1886, the Chinese Government announced to the United States minister at Peking that China of her own accord proposed to establish a system of strict and absolute prohibition, under heavy penalties, of her laborers coming to the United States, and likewise to prohibit the return to the United States of any laborer who had at any time gone back to China "in order that Chinese laborers may gradually be reduced in numbers and causes of dangers averted and lives preserved." We were only too glad to enter into such arrangements and after some negotiations

⁹ 27 Stat. 25.

¹⁰ Chew Heong v. U. S., 112 U. S. 536.

"a treaty was concluded by Secretary Bayard and the Chinese minister under date of March 12, 1888. By this arrangement the United States secured the coöperation of China in the main purpose and object of the treaty, which is stated in the first article to be the absolute prohibition of Chinese laborers from coming into the United States for twenty years, and unless notice should be given by either Government six months before the expiration of the period it should remain in force for another like period of twenty years. To this prohibition the only exception made was a Chinese laborer who had a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement. Mr. Bayard says, in making his report of the negotiations to the President, that 'considerations of humanity and justice require these exceptions to be made, for no law should overlook the ties of family, and the wages of labor are entitled to just protection.'

"The treaty did not affect the right at present enjoyed of Chinese subjects being officials, teachers, students, merchants, or travelers for curiosity or pleasure, but stipulated that in order to entitle them to admission they must produce a certificate from their Government or from the Government of the country where they last resided, viséed by the diplomatic or consular representative of the United States in the country or port whence they departed."¹¹

The treaty seemed drastic enough, but in order to be perfectly sure, the Senate added two amendments by which the prohibition was expressly extended "to the return of Chinese laborers who are not now in the United States, whether holding certificates under existing laws or not", and the production of a certificate was made absolutely necessary for re-admission. Such action as this is not uncommon for the Senate now, but it did seem a little too anxious in this case to prevent the return of those who we had previously said might return. The Chinese minister received the additional amendments with the remark

¹¹ Moore's Digest, Vol. IV, p. 193.

that they did not materially alter the treaty. It was then sent to China for ratification in May, 1888.

The government of the United States confidently expected that China would ratify the treaty. However, in China there was delay. It seemed that China desired to lessen the term of twenty years, and to gain for Chinese laborers having property less than \$1,000 in value the right to return. Congress grew impatient and passed the Act of Sept. 13, 1888, which provided for the carrying into effect of the treaty signed in Washington, March 12, 1888.¹² Since the treaty was not ratified, much controversy arose as to whether the law could be enforced. Section 13 of the act was held to be effective, although the treaty was not ratified.¹³ In *United States v. Chong Sam*,¹⁴ the fifth section and succeeding sections were held to be in force, though the treaty was not ratified. *Contra*, however, were *U. S. v. Gee Lee*,¹⁵ *U. S. v. Loo Way*,¹⁶ and *Li Sing v. U. S.*¹⁷ In *U. S. v. Tuck Lee*¹⁸ it was held that Chinese laborers who depart from the United States have the right to return only on compliance with sections 5, 6, and 7 of the act of Sept. 13, 1888, continued in force by subsequent statutes. On July 7, 1899, the Solicitor of the Treasury held that sections 5-14 inclusive became immediately operative on the passage of the act, while these sections were declared to be continued in force by the act of April 29, 1902.

No ratification of the treaty followed, however, and on receipt of unofficial reports that China had rejected it, Congress passed a bill prohibiting the coming to the United States of Chinese laborers. President Cleveland withheld his approval of the bill for some time, but finally, on the refusal of China to ratify the treaty unless the term of years was made shorter and other conditions were changed, on October 1, 1888, he signed it.

By this act of Oct. 1, 1888, it was made unlawful for any

¹² 25 Stat. 476, or Moore's Digest, Vol. IV, pp. 194-7.

¹³ *U. S. v. Jim*, 47 Fed. Rep. 431; *In re Mah Wong Gee*, id., 433; *U. S. v. Gee Lee*, 50 Fed. Rep. 271.

¹⁴ 47 Fed. Rep. 878.

¹⁵ 50 Fed. Rep. 271.

¹⁶ 68 Fed. Rep. 475.

¹⁷ 180 U. S. 486, 488-490 (1901).

¹⁸ 120 Fed. Rep. 989 (1903).

Chinese laborers "who shall at any time heretofore have been, or who may now or hereafter be, a resident within the United States, and who shall have departed, or shall depart, therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States:" and all certificates of identity under sections 4 and 5 of the act of 1882 were declared to be void, and the issuance of such certificates in the future was forbidden.¹⁹

The Chinese government protested against this legislation,²⁰ but its validity was upheld in the Chinese Exclusion Case.²¹ The President, in his annual message, Dec. 3, 1888 stated:

"In a message accompanying my approval, on the first day of October last, of a bill for the exclusion of Chinese laborers, I laid before Congress full information and all correspondence touching the negotiation of the treaty with China, concluded at this Capitol on the 12th day of March 1888, and which, having been confirmed by the Senate with certain amendments, was rejected by the Chinese Government. This message contained a recommendation that a sum of money be appropriated as compensation to Chinese subjects who had suffered injuries at the hands of lawless men within our jurisdiction. Such appropriation having been duly made, the fund awaits reception by the Chinese Government.

"It is sincerely hoped that by the cessation of the influx of this class of Chinese subjects, in accordance with the expressed wish of both Governments, a cause of unkind feeling has been permanently removed."

By the act of May 5, 1892,²² the legislation of 1882 being about to expire, all laws in force in relation to the exclusion of Chinese were continued in force for another ten years. Among other additional provisions, Senator Dolph of Ore-

¹⁹ 25 Stat. 504.

²⁰ For. Rel. 1889, 115-150; For. Rel. 1890, 177, 206, 210-219, 228-230.

²¹ *Chae Chan Ping v. United States*, 130 U. S. 581. See also *Nishimura Ekiu v. U. S.*, 142 U. S. 651; *Fong Yue Ting v. United States*, 149 U. S. 698; *Lee Moon Sing v. U. S.*, 158 U. S. 538.

²² 27 Stat. 25.

gon secured one which provided that all Chinese laborers within the United States were required to secure certificates within one year, and if anyone was found without such certificate he was to be liable to deportation (sec. 6).²³

A number of interesting cases came up under this law. It was held that a commissioner has jurisdiction to make an order of deportation under sec. 6.²⁴ So, also, a justice of the Supreme Court of the District of Columbia.²⁵ Where Chinese persons unlawfully came into the United States from British Columbia, it was held that they should under the act of May 5, 1892, be deported to China, there being no evidence that they were "citizens or subjects" of British Columbia and neither of them claiming to be such, although there was proof that one of them had lived there three years and the other a year and a half.²⁶ It was held that deportation under the act is not punishment for crime, in the sense of the Constitution,²⁷ and that the order of deportation need not explicitly refer to the act under which the person ordered to be deported is adjudged to be unlawfully in the United States.²⁸ Other important decisions held that the throwing upon the accused Chinese person of the burden of proof, is constitutional.²⁹ However, the burden of proving that the person arrested is a Chinese person rests on the United States.³⁰ In a number of cases it was held that the power of Congress to expel, like the power to exclude, aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers; or Congress may call in the aid of the judiciary to

²³ For Chinese protest against, and correspondence concerning, the act of May 5, 1892, see *For. Rel.* 1892, 106, 118, 119, 123, 126, 134-38, 145, 147-55, 158.

²⁴ *In re Tsu Tse Mee*, 81 Fed. Rep. 562; *In re. Wong Fock*, 81 Fed. Rep. 558.

²⁵ *Chan Gun v. U. S.*, 9 App. D. C. 290.

²⁶ *U. S. v. Lee Kee* (1902), 116 Fed. Rep. 612.

²⁷ *U. S. v. Wong Dep Ken*, 57 Fed. Rep. 206; *In re. Tsu Tse Mee*, 81 Fed. Rep. 562.

²⁸ *In re Tsu Tse Mee*, 81 Fed. Rep. 562.

²⁹ *U. S. v. Wong Dep Ken*, 57 Fed. Rep. 206; *U. S. v. Williams*, 83 Fed. Rep. 997; *In re Li Sing*, 86 id. 896; *Li Sing v. U. S.* (1901), 180 U. S. 486; *U. S. v. Sing Lee* (1903), 125 Fed. Rep. 627.

³⁰ *U. S. v. Hung Chang*, 126 Fed. Rep. 400.

ascertain any contested facts on which an alien's right to remain in the country has been made by Congress to depend. In the same cases it was held that Congress has the right to provide a system of registration and identification of any class of aliens within the country, and to take all proper means to carry out that system.³¹ From these and other decisions it is evident that the exclusion laws were upheld in virtually every respect.

By the act of November 3, 1893, the time within which Chinese laborers in the United States were permitted to register was fixed at six months from that date; for the phrase "at least one credible white witness," in sec. 6 of the act of 1892, there was substituted "at least one credible witness other than Chinese;" there was excluded from registration any Chinese person who had been convicted in the United States of felony; and the certificate of residence was required to contain the applicant's photograph.

In his annual message of December 4, 1893, President Cleveland stated:

"The legislation of last year requiring the registration of all Chinese laborers entitled to residence in the United States, and the deportation of all not complying with the provisions of the act within the time prescribed, met with much opposition from Chinamen in this country. Acting upon the advice of eminent counsel that the law was unconstitutional, the great mass of Chinese laborers, pending judicial inquiry as to its validity, in good faith declined to apply for the certificates required by its provisions. A test case upon proceedings by *habeas corpus* was brought before the Supreme Court, and on May 15, 1893, a decision was made by that tribunal sustaining the law.

"It is believed that under the recent amendment of the act extending the time for registration, the Chinese laborers thereto entitled, who desire to reside in this country, will now avail themselves of the renewed privilege thus afforded

³¹ Fong Yue Ting v. U. S. (1893), 149 U. S. 698. See also Lem Moon Sing v. U. S., 158 U. S. 538; Li Sing v. U. S., 180 U. S. 486; Fok Yung Yo v. U. S. (1902), 185 U. S. 296, 302.

of establishing by lawful procedure their right to remain and that thereby the necessity of enforced deportation may to a great degree be avoided."

I have discussed this at length here in order to preserve clearly the right of the United States to require aliens to register. In view of the present agitation for the registration of *all* aliens in this country, it has a renewed and added significance.

China soon asked for the opening of negotiations looking to a new treaty. These negotiations were successful. The treaty was signed at Washington, March 17, 1894 and proclaimed on December 8, 1894. It was agreed (art. I) that for a period of ten years, from the date of the exchange of ratifications, the coming of Chinese laborers to the United States, except under the conditions specified in the treaty, should be "absolutely prohibited." Those going back to China were allowed to return here, providing they had a wife, child, or parent, or property worth \$1,000 somewhere in the United States. Registration was still required. It practically covered the same grounds as existing legislation except that the act of October 1, 1888, refusing to Chinese laborers the right to return, was repealed. On January 24, 1904, the Chinese Government gave notice of the termination of the treaty on December 7, 1904.

By the act of August 18, 1894, "in every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final unless reversed on appeal to the Secretary of the Treasury."³² Under this same act the courts can not review an order of deportation from which no appeal has been taken.

By the Act of June 6, 1900, the administration of the Chinese exclusion laws was committed to the Commission

³² 28 Stat. 390. In *Quon Quon Poy v. Johnson*, Feb. 21, 1927, Sup. Court of U. S., No. 68, the Supreme Court held that the hearing accorded a Chinese boy, seeking admission to the U. S. under the claim of American citizenship, was fair and the departmental findings conclusive. See also *Re Simone* case, *supra*, p. 97, and *Ju Toy* case, *supra*, p. 102, and case cited on p. 140, in note 14.

Commissioner-General of Immigration, under the supervision and direction of the Secretary of the Treasury.³³ However, by the act of February 14, 1903, the authority possessed by the Secretary of the Treasury in relation to the exclusion of Chinese was transferred to the Secretary of Commerce and Labor,³⁴ and later to the Secretary of Labor.³⁵

After the annexation of Hawaii, on July 7, 1898, Chinese immigration to these islands was declared to be regulated by the laws of the United States. By the act of April 30, 1900, provision was made for the registering of all the Chinese in these islands, and Chinese living there were forbidden to enter continental United States.³⁶

As the time came for the lapse of the period of exclusion provided by the Act of 1892, interest in the exclusion laws again became intense, especially on the Pacific coast. A Chinese minister, in a letter to the Secretary of State, December 10, 1901, brought the matter to the attention of the United States, "urging an adjustment of the questions involved more in harmony with the friendly relations of the two governments." In his annual message of December 3, 1901, President Roosevelt stated: "I regard it as necessary to reenact immediately the law excluding Chinese laborers, and to strengthen it wherever necessary in order to make its enforcement entirely effective." A bill was introduced in the Senate on January 16, 1902 by Senator Mitchell, of Oregon, and a similar bill was introduced in the House by the late Mr. Kahn, of California. In the Senate the Mitchell and Kahn bills were considered too severe, and before passing that body they were amended by providing that all existing laws be reenacted, and continue in force until a new treaty should be negotiated. Congress adopted the bill April 28, 1902 and the President approved it the following day.³⁷ By section 1 of this act of April 29, 1902, all laws relating to the exclusion of Chinese and their residence in the United States, including sections 5, 6, 7, 8,

³³ 31 Stat. 588, 611.

³⁴ 32 Stat. 825, 826-829.

³⁵ 37 Stat. 736 (Act of March 4, 1913).

³⁶ 30 Stat. 750, 751 and 31 Stat. 141, 161.

³⁷ 32 Stat. 176.

9, 10, 11, 13, and 14 of the act of Sept. 13, 1888, were, so far as not inconsistent with treaty obligations continued in force, and were made applicable to the island territory of the United States, so as to prohibit the immigration of Chinese laborers, not citizens of the United States, from such territory to the mainland territory, or from one part to another of the island territory, except in the same group; and the islands within the jurisdiction of any State or District of Alaska are considered as part of the mainland.

Section 4 required all Chinese laborers, other than citizens, in the insular territory of the United States, except Hawaii, to obtain within a year certificates of residence in such territory, on pain of deportation; but the Philippine Commission was authorized to extend the time in those islands.

Upon the refusal of China to continue the treaty of 1894 after 1904, Congress, by the act of April 27, 1904,³⁸ amended section 1 of the foregoing act by omitting the reference to treaty obligations. Thus Congress reenacted, extended and continued, all laws then in force in so far as they were not inconsistent with treaty obligations, so that absolute prohibition of Chinese laborers has continued to this day, for this exclusion law of 1904 is still in force.

Such then has been the history of our dealings with China concerning the immigration of Chinese laborers into this country. Perhaps it is not a record about which we can boast, yet it accomplished the desired end,—the effective exclusion of Chinese laborers.³⁹ The arguments and protests of Japan against the provisions in the Act of 1924 which in effect excluded Japanese laborers from the United States become rather feeble and groundless when one considers the rather extreme measures we have taken against Chinese immigration. At any rate, from our brief review of our policy toward China, it would seem that neither China nor Japan can hold out much hope for a change in the pres-

³⁸ 33 Stat. I, 428.

³⁹ How effectively this is being done is evident from the table on page 305 taken from the report of the Commissioner-General for the fiscal year 1924, page 156.

SUMMARY OF CHINESE SEEKING ADMISSION TO THE UNITED STATES, FISCAL YEARS ENDED
JUNE 30, 1919, TO 1924, BY CLASSES

Class alleged	1919				1920			1921			
	Admitted	Debarred	Died	Escaped	Admitted	Debarred	Died	Admitted	Debarred	Died	Escaped
United States citizens	955	29	1	1	1,761	27	2	3,239	47	4	1
Wives of United States citizens...	91	5	...	...	141	1	...	290	...	1	...
Returning laborers...	418	2	...	...	320	2	...	568	6	...	1
Returning merchants...	512	28	...	...	525	21	...	702	4	...	...
Other merchants...	138	25	...	...	105	...	...	287	4	...	...
Members of merchants' families...	305	47	...	...	644	47	...	1,316	38	3	...
Students	443	1	...	...	512	2	...	838	4	...	...
Travelers	48	1	...	...	131	...	...	110	...	...	...
Teachers	16	...	...	...	28	1	...	33	...	...	...
Officials	134	2	...	...	146	2	...	223	1	...	...
Miscellaneous	280	11	...	...	377	22	...	717	192	2	1
Granted or denied the privilege of transit in bond across land territory of the United States	5,041	21	...	...	10,917	43	...	17,907	108	...	...
Total	8,381	172	1	1	15,607	168	2	26,230	404	10	3

Class alleged	1922					1923					1924			
	Admitted	Debarred	Died	Escaped	Bonded servants	Admitted	Debarred	Died	Escaped	Bonded servants	Admitted	Debarred	Died	Escaped
United States citizens	4,044	157	3	1	...	4,690	155	4	...	...	4,754	313	3	...
Wives of United States citizens...	396	7	...	...	...	387	16	...	...	...	396	23	...	...
Returning laborers	1,467	11	...	...	...	1,453	54	...	1	...	1,340	49	...	1
Returning merchants	764	47	...	...	...	980	55	...	1	...	1,229	28	1	...
Other merchants	649	22	...	...	...	497	22	1	1	...	452	8	...	...
Members of merchants' families...	1,360	130	3	...	...	1,377	194	3	1	...	1,096	195	4	...
Students	682	5	1	...	...	576	12	...	...	...	642	17	...	...
Travelers	112	...	...	...	...	116	...	...	...	...	105	4	...	...
Teachers	26	1	...	...	...	28	1	...	...	...	39	...	...	...
Officials	287	...	...	...	...	172	1	...	...	...	149	4	...	...
Miscellaneous	238	135	...	...	19	282	196	4	1	33	492	110	1	...
Granted or denied the privilege of transit in bond across land territory of the United States	7,239	89	1	...	...	6,017	64	2	...	...	8,573	300	...	2
Total	17,264	604	8	1	19	16,575	770	14	5	33	19,267	1,051	9	3

ent laws that will permit even a limited admission of their laborers into this country.

Due to the objections of the Japanese Government to other proposed methods of excluding Asiatics from the United States, the so-called latitude and longitude plan was worked out and included in the Immigration Law of 1917. This clause awkwardly, but nevertheless, effectively, closed the door against virtually all Asiatic immigration not already barred by the Chinese Exclusion Law and Treaty and the "Gentlemen's Agreement" with Japan, the latter of which, however, has been abrogated by the Act of 1924. In fact, the Act of 1917 provided for the exclusion of the Japanese under this clause in the event that the "Gentlemen's Agreement" should become inoperative.⁴⁰

As we have noted in a previous chapter the clause referred to denies admission into the United States to the following classes of aliens:

"Unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel of latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States

⁴⁰ The following inconspicuous sentence which appears in this clause, would seem to be a method of excluding by United States law all those classes of Japanese who were at the time being excluded under the Gentlemen's Agreement: "No alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States."

shall be admitted to the United States." The rest of the clause deals with the exemption of certain persons because of status or occupation, from this provision of the law.

Briefly stated the restricted area described in the provision quoted included India, Siam, Indo-China, Afghanistan, parts of Russian Turkestan, and Arabia on the continent of Asia, and New Guinea, Borneo, Sumatra, and Java as well as many lesser islands. The Philippines and Guam, and a large part of China, are also within the described area, but of course the islands named are "possessed by the United States" and accordingly are not affected, while the Chinese are barred under the exclusion law as noted above. Japan and her possessions were entirely omitted from the restricted area, and they were thus favored until the Act of 1924 went into effect on July 1, 1924.

The immediate practical effect of this latitude and longitude clause has been to check the coming of the east Indians or Hindus to the Pacific coast. In the opinion of the Commissioner of the State Bureau on Labor Statistics in California, "The Hindu is the most undesirable immigrant in the State." While the immigration from India was never large, yet there was always a fear that many might desire to come. Canada adopted a drastic policy of exclusion against them in order to prevent what promised to become a veritable deluge of Hindu immigration into British Columbia. Except for a very inhospitable attitude the United States had no effective legal means of dealing with the matter until this geographical or barred zone test was enacted. This provision, however, has effectively solved the problem of immigration from India and the other countries included in the barred zone, since it absolutely prohibits it, with the exception of the exempt classes.

CHAPTER X

JAPANESE IMMIGRATION ¹

ANALYSIS of the Japanese population in the United States—Japanese and Chinese immigration compared—Japanese in Hawaii—Causes and results of Japanese emigration—The development of anti-Japanese agitation in the United States—California's position—Act of 1907—The Gentlemen's Agreement—Treaties of 1894 and 1911—Criticisms of the Agreement—House Report 350—History of the Japanese Exclusion law of 1924—Effect of the Hanihara letter—The bill in conference—The fear of a treaty—Passage—Japan's protest—Analysis of the law—Japanese opinion—American opinion—Japanese fear of and protest against discriminatory legislation—Views of American officials—Conclusions.

From the time that Commodore M. C. Perry in 1853 virtually forced Japan to open her doors and to sign commercial treaties with the United States, Great Britain and Russia, Japanese gradually sifted into the outside world. However, it was not until the year 1885 that the Japanese government authorized its subjects to go abroad, but with the stipulation that the emigrant should never lose his allegiance to the Mikado. It was not until 1916 that Japan enacted an Expatriation law, providing that a Japanese acquiring another nationality may lose Japanese nationality by petitioning the Minister of Foreign Affairs, under the condition, however, that he must first perform his military service, if above seventeen years of age.

The increase of the Japanese population in the United States has been as follows:²

¹ Extensive use has been made of the following two pamphlets in writing this chapter:

(a) "Japanese Immigration," by R. L. Buell, World Peace Foundation Pamphlet, Vol. VII, Nos. 5-6, and (b) "An Analysis of the American Immigration Act of 1924," by J. B. Trevor, International Conciliation Pamphlet No. 202, September, 1924.

² 14th Annual Census of the United States, Vol. II, p. 29.

	Japanese	Chinese ³
1870	55	.....
1880	148	105,465
1890	2,039	107,488
1900	24,326	89,863
1910	72,157	71,531
1920	111,010	61,639

This 111,010 was composed of the following:

Native born	29,672
Foreign born	81,338
Naturalized	572
First papers	270

Thus, about 27.2% of the Japanese population of the continental United States was born in this country, and is composed, therefore, of American citizens.⁴

An examination of the figures given above for Japanese and Chinese immigration into the United States would seem to make it clear that since the enactment of the Chinese Exclusion Act, approved May 6, 1882, there has been not only a steady, but a very heavy fall in the number of Chinese enumerated within the borders of the United States. On the other hand, under an arrangement designed to accomplish in respect to the Japanese, a similar result, the latter element has increased. During only ten years of the period in which the Gentlemen's Agreement was in force, in the decade 1910-1920, we find a very heavy increase in the Japanese population, viz., approximately 54%. While it is true that the expansion of the Japanese population during these ten years amounting in all to 38,853, includes increase by birth, the census enumeration of the foreign born during that period discloses an addition to our population of 13,758 by immigration; viz., the difference between a foreign Japanese population of 67,744 in 1910 and 81,502 in 1920. On the other hand, the Japanese Ambassador, quoting from the reports of the United States Commissioner of Immigration, asserted in his note to the Secretary of State, dated April 10, 1924, that "in the years 1908-1923, the total number of Japanese admitted to and departed from the continental United States were, respectively, 120,-

³ Inserted here in order to compare them.

⁴ 14th Annual Census of the United States, Vol. II, p. 804.

317 and 111,636. In other words, the excess of those admitted over those departed was in 15 years only 8,681." Against these figures, however, must be placed the following table taken from the Annual Report of the Commissioner-General of Immigration, 1923:⁵

Fiscal year (ended June 30)	Japanese immigrant aliens	Japanese emigrant aliens *
1912	6,172	1,501
1913	8,302	733
1914	8,941	794
1915	8,609	825
1916	8,711	780
1917	8,925	722
1918	10,168	1,558
1919	10,056	2,127
1920	9,279	4,238
1921	7,531	4,352
1922	6,361	4,353
1923	5,652	2,844

The situation which has developed in Hawaii as a result of Oriental immigration would seem to be fraught with political, economic, and social problems of great complexity. Suffice it to say that in 1920 out of a population amounting to 255,912 persons, 109,274 were Japanese, of whom 60,888 were foreign born.

In Hawaii the situation is as follows:

POPULATION. ⁷			
	1920	1910	1900
Total	255,912	191,909	154,001
Japanese	109,274	79,675	61,111
Japanese percentage of total.....	42.7	41.5	39.7

⁵Page 30.

*These figures for Japanese immigrant and emigrant aliens differ from the figures cited in the annual reports of the Commissioner-General in the table, "Increase or decrease of Japanese population by alien admissions and departures." Thus, under the latter head, for 1922 the admissions to Continental United States were 8,981, the departures were 11,173, a decrease of 2,192. For 1923 the admissions were 8,055, the departures 8,393, a decrease of 338. For 1924 the figures were 11,526 and 9,248 respectively, an increase of 2,278. For 1925 the figures were respectively 3,222 and 7,265, a decrease of 4,043, while for 1926 the admissions were 4,652 and the departures 7,751, a decrease of 3,099. Since the figures given in the table for the years 1912 to 1924 are limited to "Japanese immigrant and emigrant aliens" they are naturally not as general as "alien admissions and departures." Obviously this explains the apparent contradictions involved. See Annual Reports of the Commissioner-General of Immigration for the years referred to.

⁷14th Annual Census of the United States, 1920, Vol. III, p. 1172.

Between 1900 and 1910 the Japanese population increased 1.8% in relation to the total population, and between 1900 and 1910 it increased 1.2%. Since 1920 the Japanese proportion has slightly declined. In 1921 it was 41.6% of the total; 1922, 41.1%; and in 1923, 40.4%.⁸ The Japanese men in Hawaii are married in a higher ratio than are the men of any other racial group.⁹ But the Japanese birth rate is lower than the birth rate of all other racial groups, except the American and North European.¹⁰ According to the report of the Commissioner-General for 1924 there were 3,516 Japanese admitted and 2,779 departed from Hawaii in 1923. In 1924 the figures were respectively 4,172 and 2,495 or a gain of 1,677.¹¹ In 1925 there was a decrease of 1,038, the admissions being 965 and the departures being 2,003.¹² For 1926 the figures were 1,126 and 2,640 respectively, a decrease of 1,514.¹³

Japan's emigration problem has been aggravated by the size of her population. Japan is inhabited by about 56,000,000, while her territory is only about the size of the state of California. History would seem to indicate that emigration will not solve the over-population problem, and this view has apparently been accepted by some Japanese statesmen who are looking, rather, to the industrialization of Japan.¹⁴ At any rate, such a step has been forced on her since she finds the door closed to her emigrants in Australia, New Zealand, Canada and the United States.

In so far as the United States is concerned, the situation

⁸ Adams, R., "The Japanese in Hawaii," *Foreign Affairs*, December 15, 1923; and published separately in enlarged form by the American-Japanese Relations Committee, p. 7.

⁹ 14th Annual Census of the United States, Vol. III, p. 1183. Cf. *Labor Problems in Hawaii*, H. Rept. 1717, 2 pts., 67th Congress, 4th session, February 26-27, 1923.

¹⁰ Cf. *Survey of Education in Hawaii*, Department of the Interior, Bureau of Education, Bulletin No. 16, 1920, p. 15.

¹¹ Page 148, Annual Report of Commissioner-General of Immigration, 1924.

¹² Page 178, Annual Report of Commissioner-General of Immigration, 1925.

¹³ Page 158, Annual Report of Commissioner-General of Immigration, 1926.

¹⁴ See article by Marquis Kin-ichi Komura, "Japan's Safety Valves," in *Liberty Magazine*, January 22, 1927, p. 33.

is complicated by some considerations of a political nature which must be considered owing to the fact that they have distinct bearing upon certain provisions of the Act of 1924. For example—The Gentlemen's Agreement was an understanding between the Government of the United States and that of Japan, by which the latter voluntarily undertook to adopt and enforce administrative methods designed to check immigration to the United States from Japan. Yet, it was only after prolonged negotiation and continued pressure that the Japanese government since March 1, 1920, has discontinued the issuance of passports to the so-called picture brides. Now, a picture bride has been regarded by the people on the Pacific coast as not merely a prospective wife and potential mother of large families of Japanese children, but also she has been in fact a field laborer. Obviously, therefore, the entry of an indefinite number of picture brides tended to render null and void the effect which was unquestionably intended on the part of the United States, in entering upon the Gentlemen's Agreement, even if in fact, there was no technical violation of the understanding. Unfortunately so far as reaching an ultimate solution of the immigration problem was concerned, the Japanese Government introduced the system of Kankodan brides; that is to say—"In order to assist the Japanese laborers and colonists in this country to get a Kankodan bride instead of a picture bride, the Japanese Government officially made this change in the law, that where visitors from California and the coast going back to Japan had only 30 days in which to stay there, unless they were prepared to do their conscription duty, that period was extended to 90 days in the event that they came for the purpose of getting a bride, and financial interests so arranged matters that the laborer desiring a bride could enter into a Kankodan party and secure his bride from Japan at a cost which was not much, if any, in excess of the price which would have been paid by him under the picture bride system." ¹⁵

¹⁵ Hearings before the Senate Committee on Immigration, 68th Congress, First Session on S. 2576, p. 27. Testimony of Mr. McClatchy

Furthermore, there is the question of dual allegiance. "There have been," said Mr. McClatchy, "in the neighborhood of 90,000 Japanese born under the American flag in continental United States and in Hawaii. Three years ago I had an official report from, I think it was, the department of Justice in Tokyo, and there was exactly 64 of that entire number who had been permitted to expatriate under the laws of Japan. They were claiming and exercising the rights of American citizenship,¹⁶ and all but 64 of those 94,000 were tied to Japan and compelled to do her will in peace and in war."¹⁷

Finally, a curious situation resulted from the fact that "Section 3 of the immigration law of 1917, describing and defining the barred zone, specifically provides that the exempts of that zone must, while in the United States, maintain their status, and that their wives and minor children must similarly maintain while in the United States a status placing them within the excepted classes, and that failure to maintain such a status shall subject them to deportation. In the case of the Chinese exclusion law and the Japanese Gentlemen's Agreement that requirement does not appear, although it would seem that the clear intent of Congress was that the exempts of these countries and races shall maintain their exempt status and be subject to deportation when that status is lost. By the decisions of the courts, however, a different rule now obtains as to the Chinese and Japanese, and as a result great numbers are annually added from the representatives of these races who enter as exempts to the wage-earning population of the United States by virtue of those admitted as exempts becoming wage-

¹⁶ However, there are other nations which do likewise.

¹⁷ Hearings before the Committee on Immigration, United States Senate, Sixty-eighth Congress, First Session on S. 2576, page 7. Mr. McClatchy's testimony is substantiated by the following paragraph appearing in a dispatch to the *New York Times*, dated Tokyo, July 8, 1924:

"The Japanese Cabinet today approved an important bill to permit Japanese citizens residing abroad who have not taken the oath of allegiance by serving the Japanese Army to relinquish their native citizenship.

"This will allow the children born of Japanese parentage in the United States who have so far had both American and Japanese citizenship to discard the latter." (*New York Times*, July 9, 1924.)

earners, and their wives and children similarly entering industry as wage earners."¹⁸

The first anti-Japanese agitation in the United States broke out in the year 1900. It was caused by the increasing number of Japanese who entered the country. Beginning with 1891 over a thousand Japanese entered annually, subject only to the restriction of the general immigration laws. As a result of this increase, meetings in San Francisco demanded the extension of the Chinese exclusion laws to the Japanese.¹⁹ In July, 1900, the Japanese Government decided to prohibit entirely "for the present, the emigration from Japan to Canada and also to the United States." This method did not prove effective, however, especially as Japanese continued to enter the United States from Hawaii. In February, 1905, a new anti-Japanese campaign was organized in San Francisco, which was led by the Japanese and Korean Exclusion League. Exclusion bills were introduced into Congress, but they met the opposition of President Roosevelt, because of their discriminatory nature. In October, 1906, the San Francisco School Board passed a resolution ordering all Japanese children to attend the Oriental school in Chinatown. This led to the vigorous protest of the Japanese government, and on October 23, 1906, Secretary of State Root telegraphed Ambassador Wright, that "the United States will not for the moment entertain the idea of any treatment of the Japanese people other than that accorded to the people of the most friendly European nations." In his message to Congress of December 3, 1906, President Roosevelt said, "To shut them (the Japanese) out of the public schools is a wicked absurdity." He recommended the passage of an act providing for naturalization of the Japanese. The President finally persuaded the School Board to rescind its resolution on the understanding that the President would bring Japanese immigration to an end.

¹⁸ Annual Report of the Secretary of Labor, for the fiscal year ended June 30, 1923, page 113.

¹⁹ Buell, R. L., "The Development of the Anti-Japanese Agitation in the United States," *Political Science Quarterly*, December, 1922, and March 1923.

It is to be noted from this that the early opposition to the Japanese came from California, and to this day, California has fought their admission, although she has been aided by other Pacific and Western States in recent years. California's opposition can be easily understood when it is recalled that about two-thirds of the Japanese in the United States are found in California. In 1911 the excess of Japanese births over deaths in California was 523; in 1921 it was 4,379. During 1921 and 1922 there were 540 births for every 100 deaths among the Japanese in California. For the whites there were 142 births for every 100 deaths. The Japanese have a birth rate of 341.2 per thousand married women of child-bearing age compared with a rate of 131.0 for the whole population and 124.8 for the white women in California, which means that the Japanese birth rate is about three times that of the white. About 43% of the Japanese mothers have more than three children; while only about 24% of white mothers have families larger than this.²⁰ In 1920 about 50% or 60% of the Japanese in California were engaged in agriculture. They controlled 92% of the strawberries; 89% of the celeries; 83% of the asparagus; 64% of the cantaloupes; 75% of the onions; and 66% of the tomatoes, which constituted about 13% of the total value of the annual agricultural production of the State. In 1920 the total amount of land under Japanese control, 458,056 acres, constituted one-half of one per cent of the total land area and 1.6% of the farm land of the State. The holdings were as follows:

Owned by Japanese individuals	26,988
Owned by American corporations with Japanese shareholders....	47,781
Cultivated by Japanese under cash-rent leases	192,150
Cultivated by Japanese under crop-share contract	121,000
Cultivated by Japanese under labor contract	70,137
	<hr/>
	458,056

The following statements illustrate the general attitude of Californians toward the Japanese immigrants in that state

²⁰ Figures of the California Registrar of Vital Statistics.

In a memorial to Congress, the California Constitutional Convention in 1879 stated:

"As became a people devoted to the National Union, and filled with profound reverence for law, we have repeatedly,



by petition and memorial, through the action of our Legislature, and by our Senators and Representatives in Congress, sought the appropriate remedies against this great wrong, and patiently awaited with confidence the action of the General Government. Meanwhile this giant evil has

grown, and strengthened, and expanded; its baneful effects upon the material interests of the people, upon public morals, and our civilization, becoming more and more apparent, until patience is almost exhausted, and the spirit of discontent pervades the state. It would be disingenuous in us to attempt to conceal our amazement at the long delay of appropriate action by the National Government towards the prohibition of an immigration which is rapidly approaching the character of an Oriental invasion, and which threatens to supplant the Anglo-Saxon civilization on this Coast."

In an article, "The Japanese Invasion," Mr. John S. Chambers, Controller of the State of California stated:²¹

"There is no need of excitement over Japanese threats. It is natural that they should feel as their talk indicates, to say nothing of the obvious purpose to influence opinion, and, if possible, to strike a bargain. California has won, and she feels happy and secure in the victory, limited though it is.

"There has been more or less talk of superiority and inferiority as between the races, but not a great deal. The issue is a fundamental difference, an unbridgeable difference; not one of superiority or inferiority. Granting equality, the standards of the races are almost as opposite as the poles, and there is no possibility of a common trend ever being evolved. Assimilation is impossible. . . . Their racial instinct is very decidedly developed. The two peoples run along different lines physically, morally, socially, economically, and politically. As they differ in color, so do they in traditions, habits, and aspirations. Obviously, therefore, it is unwise for the two races to meet in numbers. If they should the clash is inevitable. The situation in California is bad enough now; it must not be permitted to become worse. . . .

"I wish to emphasize the fact that we of California are not acting in a spirit of hatred, vindictiveness or retaliation. We are actuated by the instinct of self-preservation. We

²¹ *The Annals*, January, 1921.

see the danger that threatens not only California and the Pacific Coast, but which may involve our country as a whole. For Japan and Japanese on their proper side of the Pacific we have only good wishes; on this side, we cannot feel so because we know that what they would consider their good would mean our undoing."

In an article by V. S. McClatchy, publisher of the Sacramento Bee, he declared:²²

"There are three principal elements in the menace threatened by Japanese immigration to this country. They are:

"1. The non-assimilability of the Japanese race; the practical impossibility of making out of such material valuable and loyal American citizens.

"2. Their unusually large birth rate per thousand population, already shown in California to be three times that of the whites, notwithstanding that the estimated proportion of adult females to males among the Japanese is only 1 to 4, while among the whites it is, say, 1 to 1.

"3. The great advantages which they possess in economic competition, partly due to racial characteristics, and partly to standards of living, organization, direction and aid from their government. These advantages make it hopeless for American whites to compete with them.

"It should be evident that we cannot encourage or permit in our midst the development of an alien element possessing these characteristics without inviting certain disaster to our institutions and to the nation itself. The evidence on each of these points is apparently incontrovertible.

"As to non-assimilability, the first element mentioned in the Japanese menace, there are three main reasons why it is useless to attempt the making of good American citizens out of Japanese material, save of course in exceptional individual instances. The Japanese cannot, may not and will not provide desirable material for our citizenship.

"1. The Japanese *cannot* assimilate and make good citizens.

²² "Japanese in the Melting Pot: Can They Assimilate and Make Good Citizens?" in *The Annals*, January, 1921.

zens because of their racial characteristics, heredity and religion.

"2. The Japanese *may not* assimilate and make good citizens because their Government claims all Japanese, no matter where born, as its citizens.

"3. The Japanese *will not* assimilate and make good citizens. In the mass, with opportunity offered, and even when born here, they have shown no disposition to do so, but, on the contrary, pronounced antagonism."

In an article, "California—White or Yellow?" Marshall De Motte, Chairman of the State Board of Control of California, stated:²³ "The question of the mixture of Orientals, particularly Japanese, with whites, while it has its economic side, is nevertheless a race problem in the last analysis. Not of an inferior race seeking to mix with a superior race, for at no time have we cast reflection on the Chinese as to their dependability, honesty, and shrewdness in business nor on the Japanese as to their thrift, industry and finesse in diplomacy. We respect both of these members of the Mongolian race but the fact cannot be dodged that they either must not come or if permitted to come must not be allowed to gain a foothold that will eventually enable them to control a single state of the nation as they virtually control Hawaii today."

Senator James D. Phelan of California would seem to have summed up the situation in his state in the following brief article, which I quote here in full: ²⁴

"The solution of the Japanese problem, growing out of the California situation, requires prompt action by Congress. It is charged with danger. The people of Japan, as well as the people of the eastern States, should be informed in a spirit of frankness. There should be no misunderstanding, because misunderstandings breed trouble.

"Great numbers of Japanese, men and women, are in California, and are acquiring large tracts of agricultural land. The state law forbade ownership by aliens ineligible to citizenship, but the Japanese took deeds in the name of their

²³ The Annals, January, 1921.

²⁴ *Ibid.*

children born on the soil or in the names of the corporations and so circumvented the intent of the law. The initiative law adopted at the recent November elections will, it is hoped, prevent this circumvention, thus making further land acquisition impossible. The Japanese also lease lands and work for a share of the crop, and when thus working for themselves are impossible competitors, and drive the white settlers, whose standards of living are different, from their farms. The white farmer is not free from cupidity when tempted by Japanese to sell out at high prices, and they do sell out and disappear. The state, therefore, is obliged as a simple matter of self-preservation to prevent the Japanese from absorbing the soil, because the future of the white race, American institutions, and western civilization are put in peril. The Japanese do not assimilate with our people and make a homogeneous population, and hence they cannot be naturalized and admitted to citizenship. Therefore, the question is principally economic and partly racial. Japan itself excluded Chinese in order to preserve her own people,²⁵ and that is what California, Australia,²⁶ and Canada are doing. Japanese statesmen must surely, for these reasons, acquit Americans of race prejudice. We are willing to receive diplomats, scholars and travelers from Japan on terms of equality, but we do not want her laborers. We admire their industry and cleverness, but for that very reason, being a masterful people, they are more dangerous. They are not content to work for wages, as do the Chinese, who are excluded, but are always seeking control of the farm and of the crop.

"Immigration and naturalization are domestic questions, and no people can come to the United States except upon our own terms. We must preserve the soil for the Caucasian race. California, by acting in time, before the evil becomes even greater, expects to prevent conflict

²⁵ Note by the author—See Japanese Imperial Ordinance No. 352 of 1899. Also footnote on pp. 109-10 of A. M. Pooley's *"Japan's Foreign Policies."*

²⁶ Note by the author—See Williard, "White Australian Policy," Ch. II and Ch. VI.

and to maintain good relations with the Japanese Government.

"The American Government rests upon the free choice of the people, and a large majority of the people are engaged in farming pursuits. They form the backbone of every country—the repository of morals, patriotism and thrift, and in the time of their country's danger spring to its defense. They represent its prosperity in peace and its security in war. The soil cannot be taken from them. Their standards of living cannot suffer from deterioration. Their presence is essential to the life of the state. I therefore urge the Japanese Government and people to put themselves in our place and to acquit us of any other purpose in the exclusion of oriental immigration than the preservation of our national life and the happiness and prosperity of the men and women who founded the Republic, and who have developed its resources, and who occupy the land. It is theirs in trust for their posterity.

"The people of Asia have a destiny of their own. We shall aid them by instruction and example, but we cannot suffer them to overwhelm the civilization which has been established by pioneers and patriots and which we are dutifully bound to preserve."

In the immigration act of February 20, 1907, the President was authorized to refuse entrance to immigrants who, to obtain entrance to the mainland, were using passports originally issued to "any country other than the United States."²⁷ Under this authority, the President issued the proclamation of March 14, 1907, which ordered that "Japanese or Korean laborers, skilled or unskilled, who have received passports to go to Mexico, Canada or Hawaii and come therefrom, be refused permission to enter the continental territory of the United States."²⁸ This proclamation was revised on February 24, 1913, so as not to use the words "Japanese or Korean" but to bar all "such alien

²⁷ Repeated in Sec. 3 of the act of February 4, 1917.

²⁸ Department Circular No. 147, March 26, 1907; and Rule 21, Immigration Regulations of July 1, 1907.

laborers.”²⁹ This method stopped Japanese immigration from Hawaii and Mexico, but not directly from Japan. The act of 1907 also authorized the President to enter into “such international agreements as may be proper to prevent the immigration of aliens who, under the laws of the United States are or may be excluded from entering the United States, and of regulating any matters pertaining to such immigration.”³⁰

Under the vague authority of this act, President Roosevelt entered into the so-called Gentlemen’s Agreement of 1907-08. By this agreement the Japanese might continue to issue passports to nonlaborers. But it promised not to issue passports to laborers skilled or unskilled wishing to go to the continental United States with the exception of two main classes: (1) those who return to resume a formerly acquired domicile; (2) parents, wives and children, under twenty years of age, of laborers in the United States. The Japanese Government accepted the definition of “laborer” as given in the United States Executive order of April 8, 1907. Although the agreement was not applicable to Hawaii, Japan applied practically the same restrictive measures to immigration with that destination. The Japanese Government similarly limited immigration to Mexico.

The Gentlemen’s Agreement was not embodied in a treaty which was submitted to and approved by the Senate of the United States. It was merely an “executive agreement” made by the President in virtue of his power to control foreign relations.³¹ The Japanese continued to be subject to the restrictions imposed on all immigrants by legislation and they were subject to the literacy test enacted in 1917.

The treaty of November 22, 1894, between Japan and the United States provided that “The citizens or subjects of each of the High Contracting Parties shall have full liberty

²⁹ Rule 11, Regulations of the Department of Labor, in effect Oct. 15 1915, p. 153.

³⁰ 34 Stat. 898, Sec. 39.

³¹ See Corwin, E. S., *The President’s Control of Foreign Relations*, pp 117-125.

to enter, travel or reside in any part of the territories of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property." This extremely wide provision was cut down by a subsequent paragraph in Article 2, which declared that the above provision should not "in any way affect the laws, ordinances and regulations with regard to trade, the immigration of laborers, police and public security which are in force or which may hereafter be enacted in either of the two countries."³² This provision would have permitted the United States to enact an exclusion law without violating the treaty.

This treaty of 1894 was supplanted by the treaty of February 21, 1911. At the insistence of the Japanese Government the provision of the 1894 treaty, exempting exclusion laws, was omitted. Article I of the treaty was changed to read as follows: "The Citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their own choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations."³³ Article I of the treaty of 1894 appears to have authorized the free admission of Japanese into this country regardless of purpose, while Article I of the treaty of 1911 appears to have authorized such admission *only for purposes of trade*. In his letter of February 8, 1924, Secretary of State Hughes pointed out that pending immigration legislation appeared to exclude aliens entitled to enter under such treaties, and he suggested that the legislation should not apply to "an alien entitled to enter the United States under the provisions of a treaty." The House Committee would not go this far, but did add this additional

³² Malloy, *Treaties and Conventions of the United States*, p. 1028.

³³ *Treaties of the United States*, Vol. III, p. 2712.

exempted class: "(6) An alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation."³⁴

The treaty of 1911 between Japan and the United States was approved by the Senate subject to this understanding, "That the treaty shall not be deemed to repeal or affect any of the provisions of the Act of Congress entitled 'An Act to Regulate the Immigration of Aliens into the United States,' approved February 20, 1907." This understanding was accepted by Japan. The treaty was accompanied by the following declaration of the Japanese Ambassador:

"In proceeding this day to the signature of the Treaty of Commerce and Navigation between Japan and the United States the undersigned, Japanese Ambassador at Washington, duly authorized by his Government, has the honor to declare that the Imperial Japanese Government are fully prepared to maintain with equal effectiveness the limitation and control which they have for the past three years exercised in regulation of the emigration of laborers to the United States.

February 21, 1911.³⁵

Y. UCHIDA."

In the Immigration Act of February 5, 1917, the Gentlemen's Agreement was indirectly recognized as follows: "and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States." It was again recognized in the Immigration Law of May 19, 1921, which stated that the provision in regard to quotas should not apply to "aliens from countries immigration from which is regulated in accordance with treaties or agreements relating solely to immigration."

Government officials frequently declared that the Gentlemen's Agreement was a satisfactory means of limiting immigration. In 1910, the Commissioner of Labor in Hawaii said that the agreement had effectively stopped the influx

³⁴ H. Report No. 350, Committee on Immigration and Naturalization, 68th Congress, 1st session, March 24, 1924, p. 2.

³⁵ Treaties of the United States, III, pp. 2717, 2718.

of Japanese plantation labor there.³⁶ In May, 1916, Secretary of Labor Wilson defended the agreement in a letter to Senator Phelan.³⁷ In another letter to the same Senator in August, 1919, Hon. William Phillips, Acting Secretary of State, likewise said that the Agreement "was working with a fair degree of satisfaction."³⁸ The Agreement was defended by Secretary Hughes in his letter to the House Committee, of February 8, 1924, and also by Ambassador Hanihara in his note of April 10. In 1913 President Roosevelt wrote, "The arrangement we made (the Gentlemen's Agreement) worked admirably, and entirely achieved its purpose."³⁹

However, the Pacific coast was critical of the Agreement from the beginning. In 1909 the California legislature passed a resolution urging the extension of the Chinese Exclusion Laws to the Japanese.⁴⁰ In 1913 it passed a land law giving aliens ineligible to citizenship all rights to real property granted by treaty, but no others, except the right to lease land for three years.⁴¹ According to section 2169 of the Revised Statutes, which is still in force, naturalization is limited to "free white persons and to aliens of African nativity and to persons of African descent." The Supreme Court has finally decided that Japanese are not "free white persons" and are not therefore eligible to citizenship.⁴² (Japanese born in the United States are, however, citizens.) As a result of the California land law of 1913 Japanese aliens could not acquire agricultural land. In 1920 an initiative measure of even greater severity prohibited leases and all other interests in real property.⁴³ As a result of these measures, as interpreted by the Supreme

³⁶ Fourth Report of the Commissioner of Labor on Hawaii, 1910, Sen. Doc. 866, 61st Congress, 3rd Session, Vol. 70, p. 51.

³⁷ 54 Congressional Record, p. 254.

³⁸ Printed, *California and the Oriental*, p. 142.

³⁹ Roosevelt, Theodore, *An Autobiography* (1913), p. 414.

⁴⁰ California Statutes, 1909, p. 1346.

⁴¹ *Ibid.*, 1913, Chap. 113.

⁴² *Ozawa v. United States*, 260 U. S. 178 (1922). On the question of citizenship see Van Dyne, *Citizenship of the United States*, and McGovney, "American Citizenship," *Columbia Law Review*, XI, 231, 326.

⁴³ 1921 California Statutes, pp. lxxxvii-xc.

Court, the Japanese were deprived of the use of more than 300,000 acres of land which they had held by forms other than ownership. Arizona passed a similar law in February 1921.⁴⁴ Washington and Texas also passed land laws, somewhat less discriminatory than the California and Arizona laws. They allow aliens to acquire land upon the same basis as citizens if they have legally declared their intentions to become citizens of the United States.⁴⁵ Since Japanese are ineligible to citizenship, they are effectually barred.⁴⁶

In 1919, the California Senate again urged federal action in regard to Japanese immigration.⁴⁷ On June 19, 1920, the State Board of Control made a report, entitled "California and the Oriental," which was transmitted to the Secretary of State of the United States by Governor W. D. Stephens.⁴⁸ In this letter the Governor pointed out the increase of the Japanese population in California, which, in his opinion, proved that the Gentlemen's Agreement had not worked.⁴⁹ Particularly he criticized the entrance of "picture brides"—Japanese women married by proxy in Japan to Japanese laborers in America, and who were thereupon given passports to the United States. The Japanese Government voluntarily stopped issuing passports to "picture brides," beginning March 1, 1920, although they were admissible as "wives" under the Gentlemen's Agreement.

⁴⁴ Arizona Session Laws, 1921, Chap. 29, p. 2.

⁴⁵ Washington Session Laws, 1921, Chap. 50; cf. Alien Land Laws and Alien Rights, H. Doc. 89, 67th Cong., 1st sess., June 2, 1921.

⁴⁶ In a series of cases these alien land laws were sustained as against complaints founded on treaties and on the Fourteenth Amendment *Terrace v. Thompson* (1923), 263 U. S. 197; *Porterfield v. Webb* (1923) 263 U. S. 225; *Webb v. O'Brien* (1923), 263 U. S. 313; *Frick v. Webb* (1923), 263 U. S. 326. However, the denial to an alien of a license to be a pawnbroker was held to be forbidden by the federal treaty with Japan. *Asakura v. Seattle* (1924), 265 U. S. 332. In the state of Ohio *ex rel James Clarke v. Auditor of the City of Cincinnati*; the U. S. Supreme Court sustained the city's denial to an (English) alien of a permit to operate a pool room; the denial being reasonable under the city's police powers. Many important cases are cited by the Court. See No. 272; Sup. Court of U. S., May 16, 1927. (*United States Daily*, May 20, 1927.)

⁴⁷ *California Senate Journal*, 1919, p. 1377.

⁴⁸ The accuracy of this report was attacked by K. Kanzaki, Secretary of the Japanese Association of America, Hearings, "Japanese Immigration," Committee on Immigration and Naturalization, 1921, pp. 727, 728.

⁴⁹ *California and the Oriental*, pp. 7, 14.

In his 1920 report the Commissioner-General of Immigration declared that despite the Agreement, Japanese surreptitiously entered this country from Mexico and South America. He said that the Agreement needed to be clarified and that it should be jointly administered by the United States and Japan instead of by Japan alone.⁵⁰

On April 27, 1921, the California legislature passed a resolution⁵¹ urging Congress to pass an exclusion law. On May 18, 1923, it passed another resolution urging the exclusion of aliens ineligible to citizenship.⁵²

On March 24, 1924, the House Committee on Immigration and Naturalization made a report, entitled "Restriction of Immigration," accompanying H. R. 7995, part of which is as follows:

"The Supreme Court of the United States has decided that certain nationals of oriental countries are not entitled to be naturalized as citizens of the United States under our naturalization laws. . . . The Committee feels justified in offering a provision that persons ineligible to citizenship shall not be admitted as 'immigrants'. All must agree that nothing can be gained by permitting to be built up in the United States, colonies of those who cannot, under the law, become naturalized citizens, and must therefore owe allegiance to another government.

"A majority of the committee has been favorably disposed to such a policy for two years, and careful investigation has strengthened that sentiment until it has become the settled conviction of practically the entire committee.

"Considerable opposition has been offered to this provision by or on behalf of Japan, but no other nation affected thereby has offered protest. . . .

"As far as concerns conflict with the Gentlemen's Agreement the committee is somewhat handicapped in reaching a conclusion by a lack of information as to the exact provisions of that agreement. It consists of correspondence

⁵⁰ Annual Report of the Commissioner-General of Immigration, 1920, pp. 18, 19. The Japanese Government declared its willingness to revise the Agreement.

⁵¹ California Statutes, 1921, p. 1774.

⁵² California Statutes, 1923, Chap. 60.

between Japan and our Department of State which has not been made public and access to which cannot be had by this committee without permission of Japan, as explained in the letter of the Secretary of State.

"This much is certain, however, as indicated by instructions to immigration officials at the ports of entry. Under the agreement the United States bound itself to admit any Japanese who presents himself bearing Japan's passport, unless he be afflicted with contagious disease,⁵³ that is to say, the *congressional prerogative of regulating immigration from Japan has been surrendered to the Japanese Government.*⁵⁴ That condition, coupled with the fact that the terms of the agreement are secret, would justify immediate cancellation of the agreement.

"It is a curious fact that the Department of Labor, having charge of immigration, 'is not in possession of the Gentlemen's Agreement and never has been supplied with the same,' as stated in a letter from the Labor Department of February 15, 1924. . . ."

The agreement was consummated under direction of Theodore Roosevelt while President. He makes it clear, through official correspondence (amounting to a compact) with the Legislature of California, and by statements in his autobiography, that the real intent agreed upon with Japan, was to be more restrictive. Under this plan Japan was to prevent the coming of her people to continental United States so that the Japanese population therein would not increase, it being frankly explained by Roosevelt that an increase of Japanese in this country, with their advantages in economic competition and general unassimilability, would be certain to lead to racial strife and possible trouble between the two nations.

There is no question that the purpose of the agreement as thus explained by Roosevelt has not been carried out. It

⁵³ The accuracy of this statement should be checked against Table XVI, Report of the Commissioner-General of Immigration, 1922, which shows that 47 Japanese were debarred from entering the United States, but only 10 of whom were debarred because of contagious disease.

⁵⁴ The italics are mine.

is clearly established that the Japanese population of continental United States has very materially increased during the operation of the agreement, partly by direct immigration and partly by birth, and doubtless also partly by surreptitious entry.

Japan declares that she has maintained the conditions of the agreement in good faith; and while not questioning her good faith, we are concerned in the result. In certain portions of the Pacific Coast the white race confronts the very conditions foreseen by Roosevelt.

Since it is the earnest desire of the United States to continue and maintain its friendship with Japan, a fair and effective remedy for this situation must be adopted at once.

ARRIVAL OF LABORERS

Under the agreement thousands of Japanese women have come in as laborers, designated on the manifests and in the reports as such, and have performed the double duty of field laborers and mothers of families averaging five children. Even the stoppage of picture brides did not put an end to this immigration, for it continued to come and served the same purposes under the 'Kankodan bride' system.

The surreptitious entries of Japanese, partly through Canada, but perhaps more extensively through Mexico, must be very great. The information before this committee, from the Department of Labor and elsewhere, shows that thousands leaving Japan with passports for South America worked their way back through Mexico and the Imperial Valley into California. While the Gentlemen's Agreement continues in force, offering a bar to registration and while our laws make surreptitious entries immune to deportation after five years' residence, and place the burden of proof upon our department officials, these surreptitious entries cannot be guarded against.

It has been suggested that Japan be placed under the quota, since the immigration from that country under the 1890 census would thus be reduced to a minimum. It has

been stated that Japan would accept that solution. That plan, however, is most objectionable, because it would at once place Japan's nationals in the United States in conflict with our naturalization laws, and it would also discriminate in favor of the Japanese as against all other Asiatic races ineligible to citizenship.

In considering this feature of the bill and Japan's protests, it should be borne in mind that while we seek only to protect our citizens in this matter against the influx of unassimilable aliens ineligible to citizenship, and are not discriminating against Japan in the matter, Japan herself, in the exercise of a similarly wise protection for her own people, excludes the Chinese and Koreans and discriminates thereby against people of her own color in both cases, and against the people of one of her Provinces in one case.

POSITION OF ENGLISH-SPEAKING COUNTRIES ON THE PROBLEM

The United States has acquired more Japanese population than any other English-speaking country in the world; and this increase of Japanese population within our territory has occurred during the understanding between the two Governments that such increase would be unwise in the interests of both nations.

Great Britain many years ago made a treaty with her ally, Japan, whereby the nationals of Japan were to have favored consideration for residence and citizenship in all the dominions of the Empire; but with the proviso that any dominion could except this arrangement by notice before that treaty became effective.

South Africa, Australia, and New Zealand promptly gave the necessary notice and provided by various methods for absolute exclusion of Japanese immigration, an action which Japan has never protested. Canada failed to take a similar action, but later sought to remedy the omission by a Gentlemen's Agreement with Japan, limiting yearly admission from Japan to 400. This agreement has not worked

satisfactorily in Canada, and the Dominion Parliament in May, 1922, requested the Government to take immediate action looking to excluding further oriental immigration.

TIME TO REMEDY THE SITUATION

It would appear from these facts that the United States has been grossly lax in permitting the increase in her territory of an unassimilable population ineligible for citizenship, and that she has deferred too long the adoption of remedial measures.

The exclusion of aliens ineligible for citizenship has been strongly urged on Congress by the American Legion, the American Federation of Labor, and the National Grange, under resolutions adopted unanimously by the respective national conventions of those organizations from year to year. The absence of any political issue in the matter is sufficiently demonstrated by the widely different compositions and purposes of these national organizations, all imbued, however, by a strong spirit of Americanism."⁵⁵

So far as a student of this question may pass judgment upon the motives impelling both parties to the controversy, to adopt the policy which culminated in the passage by Congress of exclusive legislation in the Act of 1924, it may safely be assumed that various cabinets in power in Japan throughout the critical period, have been afraid of a repercussion of sentiment, should they yield by negotiations to the American demand of exclusion on the basis in force respecting the Chinese in the United States. On the other hand, the Secretaries of State of the United States were reluctant to press for a solution of a situation which might result equally in respect to the administration which they represented in a political overturn at the next election, should such a policy precipitate a crisis. The difficulties of such a situation have unquestionably been aggravated by the fact that throughout the many years during which the problem of oriental immigration has been agitated in and

⁵⁵ H. Rept. No. 350, 68th Cong., 1st sess., pp. 6-9.

out of Congress, the Japanese Government has persistently refused to permit the publication of the correspondence upon which the Gentlemen's Agreement was based. So rigid had been the ban placed upon any disclosures respecting the interchange of views, that the Committees of Congress charged with the responsibility of the preparation of immigration legislation had been unable to form an independent judgment as to the terms of the engagement entered into during Mr. Roosevelt's administration at the White House. On the other hand no one could have known better than Mr. Roosevelt that in entering upon an agreement which was in effect a treaty without complying with the constitutional requirement that an international agreement be submitted to the Senate for approval, we were laying the groundwork for precisely such a political reaction as developed upon the publication of the Japanese Note.⁵⁶

In March, 1924, the House Committee on Immigration and Naturalization reported an immigration bill (H. R. 7995), section 12 (b) of which provided that "no alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivisions (b), (d) or (g) of section 4; or (2) is the wife or unmarried child under 18 years of age of an immigrant admissible under such subdivision (d), and is accompanying or following to join him; or (3) is not an immigrant as defined in section 3." These exceptions would admit persons returning from a temporary visit abroad, merchants, ministers, and university professors, and bona fide students. Despite previous protests of Secretary of State Charles E. Hughes and Ambassador Hanihara, the House adopted the immigration bill containing this exclusion clause on April 12, 1924, by a vote of 323-71 (37 not voting).⁵⁷ No specific vote was taken, how-

⁵⁶ The record of previous attempts to reach a solution of the immigration problem by treaty or negotiation is not such as to encourage further efforts along this line. See remarks of Representative John C. Box, May 15, 1924 on this topic.

⁵⁷ *Congressional Record*, April 12, 1924, p. 6450.

ever, on the exclusion clause, and Representative Burton of Ohio was the only one to protest against it.⁵⁸

On April 10, 1924, Secretary Hughes addressed a letter to Senator Colt, chairman of the Senate Committee on Immigration, enclosing a note from the Japanese Ambassador, in which the latter asserted that the passage of the exclusion bill would have "grave consequences" upon the "otherwise happy and mutually advantageous relations between Japan and the United States." Following the original suggestion of Secretary Hughes, the Senate Committee had proposed to except from the quota provisions of the bill (S. 2576) "an alien entitled to enter the United States under the provisions of a treaty or an agreement relating solely to immigration." The Gentlemen's Agreement would therefore be continued, while the quota would be applied also to the Japanese, admitting only 146 a year. On April 8, Senator Reed of Pennsylvania, the author of the Senate bill, declared the Japanese "are a proud people, everybody knows that, and they would resent an exclusion law just as we would resent an exclusion law passed by Japan."⁵⁹ On the 9th he said that the quota would reduce Japanese immigration by fourteen-fifteenths.⁶⁰ But Senator McKellar opposed the quota suggestion: "Whenever we permit a quota of 146, we have established a principle by which in the future Japanese can come in here as the subjects of other nations come in. To that I am opposed . . . because we can never assimilate that race with ours."⁶¹

Although the Hanihara letter was printed in the Record for April 11, it was not discussed until April 14. At that time the late Senator Lodge moved that the proposed amendment be discussed in executive session since it related to foreign relations. The Senate thereupon went into secret executive session for 50 minutes, after which debate upon the floor was reopened. The Hanihara letter was brought into the discussion by Senator Lodge who charac-

⁵⁸ *Ibid.*, p. 6441.

⁶⁰ *Congressional Record*, April 8, 1924, p. 5992. Cf. the debate, April 2, 1924, p. 5601.

⁵⁹ *Ibid.*, April 9, 1924, p. 6139.

⁶¹ *Ibid.*, p. 6155.

terized it as "improper," a letter which contained a "veiled threat" against the United States. "The letter of the Japanese Ambassador . . . has created a situation which makes it impossible for me to support the pending amendment. . . . The amendment has now assumed the dignity of a precedent, and I never will consent to establish any precedent, which will give any nation the right to think that they can stop by threats or compliments the action of the United States when it determines who shall come within its gates and become part of its citizenship." ⁶²

Senator Reed, although the Committee had originally favored the continuation of the Gentlemen's Agreement, said, "Now, however, Mr. President, . . . I think the situation has changed. I think it ceases to be a question whether this is a desirable method of restricting Japanese immigration. The letter of the Japanese Ambassador puts the unpleasant burden upon us of deciding whether we will permit our legislation to be controlled by apprehension of 'grave consequences' with other nations if we do not follow a particular line of legislative conduct. I, for one, feel compelled, on account of that veiled threat, to vote in favor of the exclusion and against the committee amendment.

"I say that with great regret, because I believe that this action, which is forced upon us, means the waste of much of the results of twenty years of excellent diplomacy. It means the waste of much of the good feeling that followed the ratification of the Four-Power treaty, and it means a loss of part of the good relations that followed the prompt and friendly action of America after the Japanese earthquake of last year. When I vote against the committee amendment I expect to do so with a sad heart." ⁶³

On the other hand, Senator Sterling (South Dakota) said, "If we are going to exclude Japanese immigrants, let us exclude them because it is a wholesome thing, the right thing, the just thing to do for the United States and for the American people, and let us not make the letter of the

⁶² *Congressional Record*, April 14, 1924, p. 6498.

⁶³ *Ibid.*, p. 6499.

Japanese ambassador the pretext of our action here today. . . ." ⁶⁴ He pointed out that the Japanese ambassador had expressly recognized the sovereign right of the United States to exclude immigrants.

On the same day the Senate rejected the proposed amendment recognizing the Gentlemen's Agreement, by a vote of 76-2 (18 not voting).⁶⁵ On April 15 it adopted a new amendment, providing for the exclusion of "an alien ineligible to citizenship" without the yeas and nays being called for.⁶⁶ And on the following day the same amendment was passed again by a vote of 71-4 (21 not voting).⁶⁷ On April 18, the Senate voted to strike out all of the House bill (H. R. 7995) except the enacting clause, and substitute the Senate bill. This bill passed by 62-6 (28 not voting) and was thereupon sent to conference, five managers being appointed.⁶⁸ On April 19, the House likewise agreed to a conference and appointed five managers.⁶⁹ The House bill provided that exclusion should become effective July 1, 1924, while the Senate bill made it effective at once.

On April 20, another note from Mr. Hanihara was released, in which he said he did not intend the words "grave consequences" to be considered a "veiled threat." But this had no effect on Congress.

The Conference committee, representing the Senate and the House, held meetings on April 25, 26, 29, 30 and May 1, 3, and 6. The President of the United States, some time before May 1, suggested that the immigration bill postpone the application of the exclusion provision until March 1, 1925, subject to this stipulation:

"That the provisions of this paragraph shall not apply to the nationals of those countries with which the United States, after the enactment of this act, shall have entered into treaties by and with the advice and consent of the Senate for the restriction of immigration." ⁷⁰

⁶⁴ *Ibid.*, p. 6501.

⁶⁵ *Ibid.*, April 15, 1924, p. 6509.

⁶⁶ *Congressional Record*, April 15, 1924, p. 6578.

⁶⁷ *Ibid.*, April 16, p. 6656.

⁶⁸ *Ibid.*, April 18, p. 6872.

⁶⁹ *Ibid.*, April 19, pp. 6955, 6959.

⁷⁰ Cf. remarks of Judge Raker, one of the conferees. *Congressional Record*, May 9, 1924, pp. 8483, 8486.

The conferees, however, declined to accept this provision which would have enabled the President to provide for the exclusion or "restriction" of Japanese immigration by treaty. At about 5:30 P. M. on May 6, the Conference committee reached a full and final agreement. The committee adjourned until May 7 for the purpose of signing the report. At that time the bill provided that the exclusion clause should go into effect on July 1, 1924—which would give the Japanese now on the high seas an opportunity to enter the United States. But on May 7 the President invited the Republican conferees to the White House, and asked that exclusion be postponed until March 1, 1925. This suggestion—the second made by the President—was adopted and the conference report was accordingly changed. As submitted to Congress it provided "That this subdivision shall not take effect as to exclusion until March 1, 1925, before which time the President is requested to negotiate with the Japanese Government in relation to the abrogation of the present arrangement on this subject."⁷¹

On May 8, the original conference report was laid before the House. On the following day it was attacked by Mr. Sabath, among others, who declared that in inserting new matter into the bill, the conference had exceeded its powers—a point which the Chair, however, overruled.⁷² It was pointed out that under the conference bill the Japanese would be admitted on a quota basis until March 1, 1925. But according to Mr. Albert Johnson, chairman of the House Committee on Immigration, only about 80 would be thus admitted.⁷³

Congressmen opposed postponing the date to March 1, 1925, primarily because of the belief that the President would make a treaty which would set aside or at least supplant the exclusion law.

On May 2, 1924, four members of the House Committee

⁷¹Text of original conference report, *Congressional Record*, May 8, 1924, p. 8424, H. Rept. 688.

⁷²*Ibid.*, pp. 8477, 8478.

⁷³*Ibid.*, p. 8479.

on Immigration sent a letter to the House conferees on the immigration bill, protesting against the settlement of the Japanese immigration question by treaty. "After the United States has agreed to consult the wishes and interests of Asia as to immigration it could not consistently refuse to consult the wishes of Europe and the rest of the world in the same manner." The letter pointed out that the executive branch of the United States Government had frequently vetoed restrictive immigration measures passed by Congress. It cited the veto of the Chinese exclusion Act of 1879 by Hayes; the veto of a similar act of 1882 by Arthur; and the veto of the literacy test by Cleveland in 1897, Taft in 1913, and Wilson in 1917. "To pass the control of our immigration policy to the treaty-making power will completely silence the voice of the House of Representatives therein. It would surrender a sovereign right and give to foreign countries a power which the country has never conceded." ⁷⁴

In debating the conference report, Mr. Raker declared, this provision, "is a waiver of the jurisdiction of the House to legislate on immigration;" an immigration treaty "is contrary to our form of government;" "the president has no power to enter into a treaty in regard to immigration whereby he may say that a foreign country can determine who to consult as to how immigration shall come into this country, because it is the yielding of sovereign power. . . . It means we waive, that it is a relinquishment; it is getting down on the knees and getting the President to enter into a treaty that we may waive our rights, that we may fail to do our duty, that we may violate the Constitution; that we might become subservient to a foreign country, that we are afraid to enact the laws and enforce them, that we have sworn we would do in regard to the sovereign rights of the country." ⁷⁵

Other speeches in the House reflected the intensity of local feeling. At the close of the debate, the House adopted

⁷⁴ Letter printed in *Congressional Record*, May 6, 1924, pp. 8193, 8194.

⁷⁵ *Congressional Record*, May 9, 1924, pp. 8484, 8485.

a motion by 191-171 (70 not voting), to recommit the bill to conference with instructions not to agree to postponing exclusion until March 1, 1925.⁷⁶

In the Senate, debate took place on the conference report before it had formally been presented to that body.⁷⁷ Senator Robinson attacked the clause authorizing the President to negotiate as to the abrogation of the Gentlemen's Agreement on the ground that "it would seem to constitute a recognition of the immigration question as a proper subject for international negotiations; it would seem to be an abandonment of the position the Government of the United States heretofore has maintained—that the question as to who shall be admitted into the United States is purely a domestic question."⁷⁸ He went on to say that the conference report recognized the "Gentlemen's Agreement as a treaty obligation, and they refuse to recognize the right or the power of Congress to legislate upon the subject until the so-called Gentlemen's Agreement has been abrogated or rescinded by a contract between this government and Japan which they petition the President to negotiate. If that principle is to be adopted, it constitutes a distinct recognition of the force of the Gentlemen's Agreement as superior to the right of Congress to legislate upon the subject."⁷⁹

Senator Lodge declared that the immigration treaties with China were a "mistaken policy". He went on to say that "In my judgment, only the Congress of the United States has that power . . . that is, the entire legislative body of the United States must say to the rest of the world, 'We alone have the power to say who shall come into the United States as immigrants.'"⁸⁰

Senator Reed said, "It is a matter of lively concern to all the Christian people of the United States, I think, that Christianity should be spread in foreign lands which at present embrace other religions. We have hundreds of mis-

⁷⁶ *Congressional Record*, May 9, 1924, p. 8498.

⁷⁷ The report was not presented because of the action of the House.

⁷⁸ *Congressional Record*, May 8, 1924, p. 8344.

⁷⁹ *Ibid.*, p. 8344.

⁸⁰ *Ibid.*, p. 8346.

sionaries scattered all over Japan; but the people who are backing them up, the good Christian people of this country who send them out and support them there, are all of them concerned at the rough-shod way in which Congress has established its decision here. . . . It is perfectly obvious that exclusion can be accomplished pleasantly as well as unpleasantly. It is perfectly obvious that exclusion is going to be accomplished in one way or another, but the President is anxious, I know, from what he has said to us, to do it in such a way as shall not make the task of these missionaries in Japan any harder, as shall not create unnecessary friction for them, and shall not make our foreign relations any more difficult.”⁸¹

Senator Shortridge said, “Inasmuch as it is a domestic question, inasmuch as that domestic question is under the jurisdiction of the legislative branch of our Government, it follows that control of such a question is not within the treaty-making power of this Government under the Constitution.”⁸²

As a result of the action of the House of Representatives, the conference bill was returned to the conference, where the provision postponing Japanese exclusion until March 1, 1925, was removed. The revised conference report provided that the exclusion of aliens ineligible to citizenship (section 13, c) should become effective July 1, 1924.⁸³ This report was accepted and the bill passed on May 15, by the House of Representatives by a vote of 308-62 (63 not voting) and by the Senate by a vote of 69-9 (18 not voting).⁸⁴ The immigration bill providing for the exclusion of aliens ineligible to citizenship—a provision effective July 1, 1924, was then sent to the President for his signature.

On May 18, 1924, Cyrus E. Woods, United States Ambassador to Japan, resigned, nominally on account of family reasons. But on leaving Japan he criticized severely the passage of the exclusion law. Upon his arrival in the

⁸¹ *Congressional Record*, May 8, 1924, p. 8349.

⁸² *Ibid.*, p. 8350.

⁸³ Revised conference report, printed *Congressional Record*, May 12, p. 8642; May 15, p. 8816.

⁸⁴ *Congressional Record*, May 15, 1924, pp. 8836, 8882.

United States he declared that the Japanese Government would, in his opinion, be willing to agree to almost any form of restrictive treaty.⁸⁵ Ambassador Woods' resignation was followed by the return of Ambassador Hanihara to Japan. On May 26, 1924, President Coolidge signed the Immigration Act, which was accompanied by a statement criticizing the method used by Congress to obtain exclusion. The signature of the Act was followed by the formal protest of Japan, of May 31, 1924, to which the United States replied on June 16.⁸⁶

Sub-section (c) of Section 13 of the Act, aims to correct the situation which has been hereinbefore described by providing that no alien ineligible to citizenship shall be admitted to the United States; that is to say, although the Japanese have figured almost exclusively in the controversy over this section, its provisions apply to a population amounting to perhaps a billion of people, of which the inhabitants of Japan comprise barely three-score millions.⁸⁷ (In other words, it eliminates all previous discrimination in favor of Japan, as far as the other peoples of Asia are concerned.) However, when the exceptions to this provision are carefully examined, it will be observed that the substance and clear intent of the Gentlemen's Agreement are embodied in the statute; that is to say, (1) an alien ineligible for citizenship previously lawfully admitted to the United States, returning from a temporary visit abroad may be admitted; (2) an immigrant ineligible for citizenship who continuously, for at least two years immediately preceding the time of his application for admission to the United States, has been and is seeking to enter the United States solely for the purpose of carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary or university, and his wife and

⁸⁵ *New York Times*, June 17, 1924.

⁸⁶ For the effect of the ineligible to citizenship provision upon existing treaties, laws and customs, see article by A. W. Parker, "The Ineligible to Citizenship Provisions of the Act of 1924," *American Journal of International Law*, Vol. XIX (1925), p. 30 ff.

⁸⁷ *Statesman's Year Book for 1924*, p. 1054, gives the Japanese population in 1922, as 59,460,252.

his unmarried children under 18 years of age if accompanying or following to join him, may be admitted; or (3), an immigrant ineligible for citizenship who is a bona fide student at least 15 years of age and seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary or university, particularly designated by him and approved by the Secretary of Labor, may be admitted. These provisions are the exemptions provided for in sub-sections (b), (d) and (e), of Section 4. Finally, more important than these classes of persons are those groups defined in Section 3 of the Act, which entitles Japanese or any of the peoples to whom the provisions of the section apply, to admission at our ports.⁸⁸

A careful consideration of the provisions described in the preceding paragraph makes it clear that the essential difference between the situation as it existed prior to the passage of the Immigration Act of 1924, and what may be expected to eventuate now that the law has gone into effect, lies in the fact that *the United States Government will now determine the qualifications of any individual ineligible for citizenship seeking admission into the United States*; that is to say, the responsibility for a determination of the eligibility and good faith of such persons to enter regardless of the country of their origin, will be determined by the American Consul at the point of departure for our shores, and by the Immigration Inspectors at the ports of entry of the United States. To what extent the release of control by the Japanese Government over passports of persons seeking to enter contiguous territory to the United States, may affect surreptitious entries from Mexico and Canada, is yet impossible to determine.

As was to be expected Japanese opinion was bitter against the law and for a while the situation might be called "acute."

According to the Japan Chronicle, a leading English newspaper in Japan, no diplomatic event for many years

⁸⁸ See Chapter VII for a list of such classes who may enter the United States.

has aroused so much comment and excitement in Japan as the passage of the exclusion law in the United States.

On April 20, 1924, fifteen Tokyo newspapers published a joint declaration calling the bill "inequitable and unjust." The passage of the bill, in their opinion, "would cause a grave set-back to all glorious enterprises" which Japan and the United States had undertaken, particularly at the Washington Conference.

The Osaka Asahi called the action of Congress a "glaring breach of international etiquette" and a "deliberate insult." The jingoist Yorodzu said that America "has pounced upon us with drawn sword. . . . We must defend our honor and interest." It advised American missionaries to return home immediately. The Yomiuri said, "Must we meekly submit to this arrogant and tyrannical attitude?" The Tokyo Nichi Nichi said, "The honor of Japan has been mercilessly destroyed." Jiji called the anti-Japanese agitation a "grave insult to Japan." The Osaka Mainichi said that the "national honor of Japan" had been seriously hurt. The Tokyo Asahi called the exclusion law "harsh, cruel and unjust." Hochi said this "persecution" of the white races would lead to a union of Asiatic peoples. The chauvinistic magazine, Japan and the Japanese, said that the "selfish and arrogant" exclusion of colored people from the United States would engender great antipathy between the white and colored races. The Oriental Economist asked that the Japanese Government champion the cause of all Asiatics as regards America. Dr. Uesugi, a professor in Tokyo Imperial University, noted for his chauvinistic writings, advocated the convocation of a Conference of Colored Races in Tokyo, to discuss means of resisting the treatment by America. Dr. Hayashi, a professor at Keio University, said that America's policy might necessitate the Formation of a League of Yellow Peoples.

While the major portion of the criticism of the exclusion law dealt with its discriminatory features, a number of the more radical journals also expressed resentment that the

United States should exclude Japanese immigrants from the United States, regardless of the means employed.

In addition to government representatives, such prominent Japanese as Viscount Shibusawa, Baron Sakatani, and Viscount Goto protested against the act because of its "discriminatory" features. Cables protesting against the law were sent to the United States by the American Merchants' Association, the National Christian Council of Japan, the Japan League of Nations Association, the National Chamber of Commerce, the Imperial Education Association and the Association of American University Clubs in Japan.

Anti-American demonstrations took place in some cities, one of which was occasioned by the suicide of a Japanese on account of the exclusion law. Boycotts of American merchants and moving picture films were started, but were soon dropped because they injured Japanese as much as American interests.

On July 1, the date the exclusion law went into effect, both houses of the Japanese Diet passed resolutions protesting against the discriminatory act. And societies placarded Tokyo with signs, saying, "Hate Everything American," and urging Japanese never to enter a "Church supported or guided by Americans or United States missionaries." Mass prayer meetings were also held at all the national Shinto shrines throughout the country.

In the United States criticism from many quarters was directed against the method employed by Congress to achieve an end which it was contended was already being achieved by the Gentlemen's Agreement, or could have been achieved by other diplomatic means. The New York Times said that there was "no justification for the Senate's shocking disregard of the feelings of the Japanese. The proper way to solve the problem was through diplomatic channels. In wilfully ignoring this the Senate inflamed Japanese hatred of the United States and totally misrepresented the true attitude of the people of this country."⁸⁹

The New York Herald Tribune called the action of Con-

⁸⁹ Editorial, May 27, 1924.

gress "an unnecessary affront to Japan."⁹⁰ The New York World said, "This deliberate sabotage of our delicate international relations had no other purpose than that of cadging for the votes of hot-heads upon the Pacific Coast."⁹¹ The Washington Post said, "There was no occasion for the disagreeable happening, no difference in principle requiring it, and no exigency excusing it."⁹² The Christian Science Monitor said, "It is certain that the method is highly offensive to a Nation with whom the United States should take especial pains to remain on terms of peace. . . . It was therefore as unwise as it was discourteous for the United States Congress to brand this intelligent and progressive Japanese people with a stigma only applicable to the most uncivilized and barbarous of Asiatic tribes."⁹³ According to one survey, forty out of forty-four newspapers, east of Chicago, criticized the passage of this law by Congress.⁹⁴

In the West the Los Angeles Express said that "Secretary Hughes is wholly right in his protest against exclusion." But the San Francisco Chronicle said, "It is no more disrespectful to the Japanese than to the Chinese to exclude them by name."⁹⁵

The News Bulletin of the Foreign Policy Association declared, "persistent agitation, inadvertently abetted by diplomatic ineptitude and culminating in Senatorial hysteria, threatens needlessly to wreck the most important achievement of the Washington Conference. . . ."⁹⁶

On the other hand, the Boston Transcript declared, "Congress was exactly and everlastingly right."⁹⁷ The Hearst papers also took this point of view.

A large number of organizations passed resolutions criticizing the passage of the exclusion law. At its annual meeting in December, 1923, the Federal Council of Churches of Christ in America, deplored as "unpatriotic

⁹⁰ Ed., May 27, 1924.

⁹² Ed., June 1, 1924.

⁹⁴ Wile, F. W., *Christian Science Monitor*, April 26, 1924.

⁹⁵ Cf. "Exclusion or Quota for Japanese," *Literary Digest*, March 1, 1924.

⁹⁶ April 25, 1924.

⁹¹ *Ibid.*

⁹³ Ed., May 21, 1924.

⁹⁷ Ed., June 19, 1924.

and unchristian" the discriminatory treatment of aliens, and advocated a non-discriminatory naturalization test.⁹⁸ The Administrative Committee of the Council also protested against excluding "aliens ineligible to citizenship," on the ground that it is "unnecessarily and inevitably offensive." Similar resolutions criticizing the method used by Congress were passed by the Massachusetts Federation of Churches, the American Board of Commissioners for Foreign Missions, the National Council of the Protestant Episcopal Church, the Conference of the Methodist Episcopal Church, meeting at Springfield, Mass., the Northern Baptist Convention, the Committee representing the Foreign Missionary Boards of the United States, the General Synod of the Reformed Church in America, the Woman's American Baptist Foreign Missionary Society, the Woman's Union Missionary Society of America, the Methodist Episcopal Church South, the National Board of the Y. W. C. A., the American members of the Executive Committee of the World Sunday School Association, the World Peace Foundation, the National Chamber of Commerce at its annual meeting at Cleveland, and the National Committee on American-Japanese Relations.

A group of prominent New York business and professional men sent a cablegram to the American-Japanese Society in Tokyo "deeply" deploring the unjustifiable things said during the exclusion debate in regard to Japan. The message was signed among others, by Henry W. Taft, George W. Wickersham, Thomas W. Lamont, Darwin P. Kingsley, and J. B. Millet.⁹⁹

Another cablegram was signed by 30 heads or Presidents Emeritus of leading American universities and colleges, regretting "the inconsiderate action of the American Congress, which does not represent the sentiments of the American people toward Japan." The author of the message was Charles W. Eliot, President Emeritus of Harvard, and among those who disapproved the action of Congress

⁹⁸ Hearings on S. 2576, cited, p. 55.

⁹⁹ *New York Times*, July 2, 1924.

were David Starr Jordan, President Emeritus of Stanford University, and W. W. Campbell, President of the University of California.¹⁰⁰

On the other hand, the California American Legion, the State Federation of Labor, the Native Sons of the Golden West, and the State Grange, protested against the attempt of Ambassador Hanihara "to influence the electorate of this country on a purely domestic question—Immigration."¹⁰¹

Two editorials in *The New York Times*, for August 15 and 19, 1924, concerning remarks of Mr. Yusuke Tsurumi at the Institute of Politics throw considerable light on the subject.

"Better Understanding in Japan.

"Even those who deplore the method of Congress in substituting the Japanese Exclusion act for the Gentlemen's Agreement will question the statement of Japan's representative, Mr. Tsurumi, at the Institute of Politics, that the new act has had and will continue to have 'grave consequences' not only in Japan but throughout the world. Temporarily, to be sure, it caused a storm of anti-American feeling in Japan. But even the efforts of a few persons to use this to foster a boycott on American goods are now abandoned, and there are indications that the Japanese are beginning to realize that no insult was meant by the exclusion law. Indeed, it is perceived that the American Government has relieved the Japanese Government of the unpleasant task of restricting the exodus of Japanese laborers to America.

"Had the law not been passed, and had the Japanese population on the coast continued to increase, there is no doubt that feeling would have become more bitter. As for

¹⁰⁰ *New York Times*, July 6, 1924. Also see article by C. G. Fenwick in *American Journal of International Law*, Vol. 18 (1924), p. 523, in which he stated: "If the Japanese protest against the exclusion provisions of the Immigration Act is weak on the side of law, it is strong on the side of common international courtesy and decent neighborly conduct."

¹⁰¹ *Literary Digest*, cited.

the rest of the country, it is only necessary to recall the way in which the first Japanese loan was placed, and the rapidity with which the second loan has been taken, to show that there is absolute confidence in Japan. The financial aid extended after the terrible earthquake is ample proof of the friendship which the American people have always felt toward Japan.

"If by 'grave consequences' Mr. Tsurumi means merely a reorientation of the political situation in the Far East, he is undoubtedly right. This would have come, however, regardless of the action of the American Congress. It has long been understood by Japanese leaders that the American Continent could not and would not be a suitable field for Japanese colonization. President Roosevelt made this quite clear during the negotiations leading up to the 'Gentlemen's Agreement' in 1907. Nor have his successors done anything to imply a change in this attitude.

"Those in Japan interested in establishing Japanese colonies abroad will now have to return with renewed interest to the Asiatic mainland, and those seeking for Japan the commercial supremacy of the Far East will be able to oppose American rivalry with greater likelihood of popular support at home.

"Of 'grave consequences' in the more serious meaning of the words there can be little real danger. Certainly Japan has nothing to fear from the United States. If Mr. Tsurumi wishes to do his part in conciliation, he has only to talk to his own people with the same commendable frankness which he has used at Williamstown, and explain to them that just as the Japanese would not welcome large and growing colonies of Americans in their midst, so the Americans of the Pacific Coast fear the growth of large Japanese settlements in California and elsewhere. There is no question of racial 'inferiority.' Nor is there any intended insult to Japan. Mr. Tsurumi can bear witness to the deep-seated admiration and friendship of the American people for the people of Japan. Such a sentiment is not provocative of 'grave consequences'."

“Through Japanese Eyes.

“In stressing again that Japan was disturbed by the manner rather than by the fact of the exclusion of her people from the United States, Mr. Yusuke Tsurumi has helped to clear up a point but little understood in this country. The Japanese people, he explained in his closing lecture at the Institute of Politics, had become reconciled to the principle of exclusion at the time of the Gentlemen's Agreement. What they resented was the abrogation of that agreement and the substitution for it of legislation which implied that Japan had not kept the faith. This to them was a blow at their national honor.

“It was the method rather than the substance which American friends of Japan also deplored. They questioned the necessity of abrogating the Gentlemen's Agreement and denounced such action as discourteous and unpolitic. The activities of the Senate, in particular, seemed to be based on a desire to avenge a fancied threat rather than to deal tactfully with a delicate situation. Not even the unwise use by the Japanese Ambassador of the phrase ‘grave consequences’ warranted the brusque and unmannerly action of the Senate.

“Desirable as it is for the American people to understand the Japanese point of view, it is essential for the Japanese to understand the American point of view. Rightly or wrongly, immigration was the question—in fact, the sole question—in American eyes. Disregarding the criticism of those fanatics who claimed that Japan had not lived up to her part of the Gentlemen's Agreement, the underlying motive of the overwhelming majority of the members of Congress who supported the Immigration Restriction bill was to handle the entire problem as a domestic issue, and, in the case of the Asiatics, to embody in permanent form the restrictions which in the past had been contained in treaties and agreements. Rightly or wrongly, the American people were opposed to any further immigration of non-assimilable races. A few of the more farseeing felt

that by settling the matter now once and for all it would cease to be a source of friction, and the unassimilable aliens would be less exposed to local jealousies and animosities. In so far as the Japanese in particular were concerned, these observers felt that the history of Chinese exclusion pointed the way. So long as the Chinese continued to increase in numbers race prejudice grew. Since they have declined race prejudice has declined. The bitterest opposition to the Japanese in California is in those regions where they are numerically the strongest. It is a safe prediction that when their numbers fall resentment against them will gradually disappear.

"It is highly regrettable that the passage of the exclusion bill should have led many Japanese to think, in the words of Mr. Tsurumi, 'that America has no confidence in the Japanese Government, in its pledges and its integrity, and does not care a fig for its friendship and coöperation.' This is the reverse of the truth. If Mr. Tsurumi can make this as clear to his own people as he has made clear to us the Japanese point of view, he will have rendered a further service to Japanese-American friendship."

The Japanese Government has always protested against any legislation in the United States that tended to be or to appear to be discriminatory.¹⁰² It protested vigorously against the San Francisco school ordinance of 1906 and the California land law of 1913. In a note of June 4, 1913, the Japanese Ambassador declared that in the opinion of the Japanese Government:

"The measure is unfair and intentionally racially discriminatory, and, looking at the terms of the treaty between our two countries, they are equally well convinced that the act in question is contrary to the letter and spirit of that compact and they moreover believe that the enactment is at variance with the accepted principles of just and equal treatment upon which good relations between

¹⁰² See Williard, *White Australian Policy*, for Japan's protests to Australia against the latter's restrictions against Oriental immigration.

friendly nations must, in the final analysis, so largely depend." ¹⁰³

He said further:

"The provisions of the law, under which it is held that Japanese people are not eligible to American citizenship, are mortifying to the Government and people of Japan, since the racial distinction inferable from those provisions is hurtful to their just national susceptibility. The question of naturalization, however, is a political problem of national and not international concern. So long, therefore, as the distinction referred to was employed in relation to rights of purely political nature the Imperial Government had no occasion to approach the Government of the United States on the subject. But when that distinction is made use of, as in the present case, for the purpose of depriving Japanese subjects of rights and privileges of a civil nature, which are freely granted in the United States to other aliens, it becomes the duty of the Imperial Government, in the interests of the relations of cordial friendship and good understanding between the two countries, to express frankly their conviction that the racial distinction, which at best is inaccurate and misleading, does not afford a valid basis for the discrimination on the subject of land tenure."

As far as Japanese residents in the United States were concerned,

"The Imperial Government claim for them fair and equal treatment, and are unable either to acquiesce in the unjust and obnoxious discrimination complained of, or to regard the question as closed so long as the existing state of things is permitted to continue." ¹⁰⁴

Ever since about 1911, general immigration bills have contained a clause barring immigrants "ineligible to citizenship" unless already excluded by treaty or agreement. But at Japan's protest against the mere use of these words, they were dropped. Such a phrase was originally inserted in the immigration bill of 1917, but was again omitted at

¹⁰³ U. S. Foreign Relations, 1913, p. 633.

¹⁰⁴ *Ibid.*, p. 653; cf. also *ibid.*, 1914, p. 434.

Japan's protest, the "barred zone" clause, which did not apply to China or Japan, being used instead.

On the other hand, prominent Americans have been just as opposed as the Japanese to any discriminatory legislation.

As far as treatment of Japanese in the United States is concerned, President Roosevelt protested against the passage of an exclusion law, against the San Francisco school ordinance, and against anti-Japanese measures introduced into the California legislature in 1907.¹⁰⁵ In the 1909 California legislature about 17 anti-Japanese measures were introduced but dropped at the intervention of President Roosevelt.¹⁰⁶

In his *Autobiography* President Roosevelt declared that exclusion was "fundamentally a sound and proper attitude, an attitude which must be insisted upon, and yet which can be insisted upon in such a manner and with such courtesy and such sense of mutual fairness and reciprocal obligation and respect as not to give any just cause of offense to Asiatic peoples."¹⁰⁷

In a letter to Hon. William Kent of February 4, 1909, Roosevelt expressed himself in favor of a reciprocal arrangement between Japan and the United States which would keep American laborers out of Japan and Japanese laborers out of the United States.¹⁰⁸

The assurances of President Taft that the treaty of 1911 would continue exclusion prevented the California legislature from passing an anti-Japanese land law in 1911. In 1913 President Wilson protested against the proposed land law, declaring "Invidious discrimination will inevitably draw in question the treaty obligations of the government of the United States. I register my very earnest and respectful protest against discrimination in this case." He

¹⁰⁵ Buell, R. L., *The Development of the Anti-Japanese Agitation in the United States*.

¹⁰⁶ Roosevelt, Theodore, *An Autobiography* (1913), p. 416.

¹⁰⁷ *Ibid.*, p. 411.

¹⁰⁸ Printed in "Japanese Immigration and Colonization," brief prepared by V. S. McClatchy (1921), S. Doc. 55, 67th Cong., 1st Sess., p. 62.

sent Secretary of State Bryan to Sacramento to confer with the legislature, but without the desired result. In 1916 the American State Department brought its influence to bear against the proposed bill excluding aliens ineligible to citizenship. In April, 1919, Secretary of State Lansing wired from the Paris Peace Conference that "it would be particularly unfortunate" to have anti-Japanese legislation passed by the California legislature at that time. Just before the adoption of the 1920 land law in California, acting Secretary of State Davis said, "No outcome of the California movement will be acceptable to the country at large that does not accord with existing and applicable provisions of law and, what is equally important, with the national instinct of justice." Finally, on February 8, 1924, Secretary of State Hughes protested against the enactment of a discriminatory exclusion measure.

Thus, while Congress was within its rights when it provided for exclusion of all persons ineligible to citizenship, some persons felt and still feel that we accomplished our end in a rather undiplomatic way. No treaty was violated, since the Gentlemen's Agreement was never ratified by the Senate of the United States. The exclusion clause can hardly be called "discrimination" since it is a general proposition applying not only to all Asiatic peoples but to all others ineligible for citizenship for other than racial reasons.¹⁰⁹ It is easy to understand, however, that past favors to the jealous pride of the awakened Japanese people could make them believe that such action as taken by Congress was discriminatory. Yet it must be recognized by all thoughtful persons that restriction, even absolute exclusion, does not signify racial hatred. Restriction does not mark a nation as the inferior of any or all others. Many individuals of any race may be superior by every just standard of measurement to many individuals of the white race. Yet true assimilation requires racial compati-

¹⁰⁹ See section 28, sub-section (c) for definition of term "ineligible for citizenship."

bility, and any irreconcilable resistance to amalgamation and social equality cannot be ignored.

Kipling recognized this when he wrote

‘East is East, and West is West,
And never the twain shall meet—”

For America, the Japanese are a non-assimilable people, as are all Asiatics, and little could be gained by the continuance of a policy contrary to American interests and which removed from our control a universally recognized domestic problem. This was recognized by both nations. Japan, as well as the United States, knew that sooner or later exclusion was coming, for it was inevitable. In entering upon the Gentlemen's Agreement Japan recognized the reasonableness of the American contention, that subjects of that Empire be excluded both as a matter of right, and as an economic necessity,¹¹⁰ in addition to the obvious non-assimilation argument. Certainly we have dealt with Japan in a more honorable manner than with China, although this cannot be given as an excuse for our recent action toward the former.

The whole controversy with Japan has been over the *method* of bringing about effective exclusion of Japanese laborers, who, according to Jenks and Lauck, are not as desirable as the Chinese laborers.¹¹¹ Now that exclusion has been accomplished by legislative action rather than by treaty and diplomatic negotiations, it would seem wise to keep the recent controversy “closed”, despite the fact that the Japanese ambassador in March, 1925, expressed the hope that this government would reconsider its exclusion policy. Recent events have tended to dispel virtually all feelings of ill-will in both nations.¹¹² From the White House and our State Department have come statements that our relations with Japan are serene, friendly and

¹¹⁰ On this subject see Matheson, R. O., “The Myth of Japanese Efficiency,” with Reply by Kawakami, K. K., in *Current History*, May, 1927.

¹¹¹ Jenks and Lauck, *The Immigration Problem*, p. 252.

¹¹² See *Literary Digest*, January 3, 1925, “Squelching a Japanese War-Scare.”

untroubled. From the Japanese Government have come official assurances of friendship. Extraordinary utilization was made of the appointment of the new Japanese Ambassador, Tsuneo Matsudaira, to emphasize the affectionate regard in which the two countries hold each other. Secretary Hughes broke a diplomatic precedent by issuing a formal statement declaring that Japan had paid this country a signal honor by sending such a man as her envoy and that "we can look forward now to the most cordial relations with Japan." From the White House has come word that President Coolidge and his Administration look upon the present rulers of Japan "as candid exponents of international friendship." Japan, says the Detroit Free Press, "surely can no longer be in doubt regarding the friendly desire and intent of the people of the United States." It is to be hoped that the friendship between these two great nations will grow more cordial in the near future and ripen into a deep and mutual understanding on all problems that touch their respective interests.

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NOTE. A bibliography on Immigration might be extended almost indefinitely. Especially is this true of those references included under "primary sources" and under magazine articles, pamphlets, etc. Only the most important articles that have appeared in recent years are listed here. Magazine articles on the subject are legion. Reference to any standard bibliography will give a list of articles and pamphlets on the subject prior to 1921, hundreds of which have been read in the preparation of this study. Only the recent "hearings" are listed here. My guide in the preparation of this bibliography has been to list those references, primary and secondary, which have influenced legislation and public opinion on the subject of immigration, especially within recent years.

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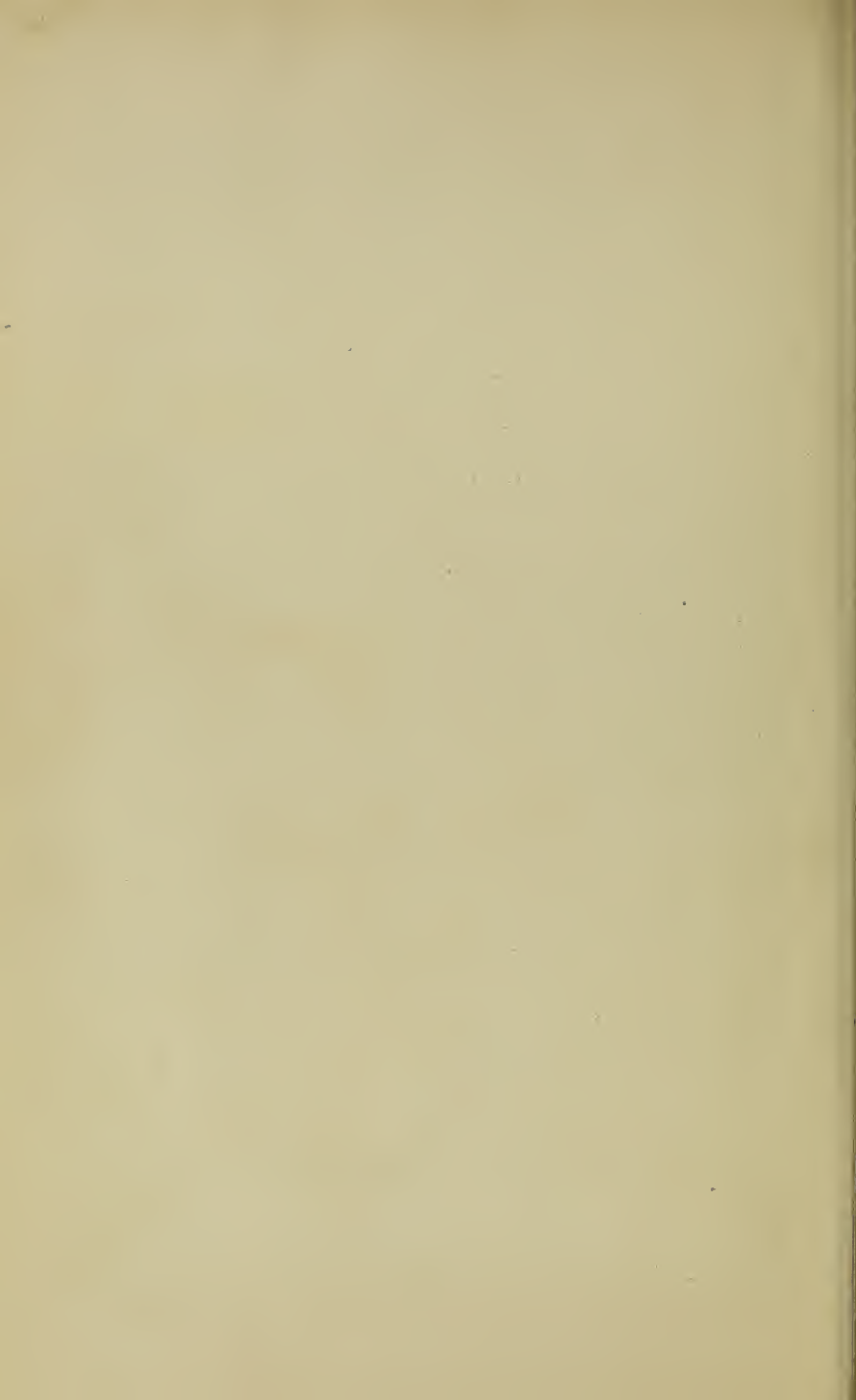
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